

EXHIBIT 21

Miami, FL

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X
In re: PHARMACEUTICAL INDUSTRY) MDL DOCKET NO.
)
AVERAGE WHOLESALE PRICE) CIVIL ACTION
)
LITIGATION.) 01CV12257-PBS
-----X

VOLUME III

The videotaped deposition of BARBARA ECHEVARRIA, called by the United States for examination, taken pursuant to subpoena and pursuant to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Rachel F. Gard, Certified Shorthand Reporter, at 77 West Wacker Drive, Suite 3500, Chicago, Illinois, commencing at 9:15 a.m. on the 7th day of March, A.D., 2008.

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<p>1 Q. -- for example?</p> <p>2 A. Yes.</p> <p>3 Q. So the COPN31 gives us -- it's part of</p> <p>4 the COP system?</p> <p>5 A. Yes.</p> <p>6 Q. And the N31 explains it's Extract No. 31?</p> <p>7 A. Well, the N being the record layout and</p> <p>8 there's like a T, I think, means a file. So they</p> <p>9 just all have meaning and --</p> <p>10 Q. So RMR helps to identify that with the</p> <p>11 RMR system?</p> <p>12 A. Yes, yes.</p> <p>13 Q. Let's move to No. 30, which asks whether</p> <p>14 any of the fields that were not extracted would</p> <p>15 have had any affect on calculating unit prices.</p> <p>16 A. Well, my understanding of the unit price</p> <p>17 statistics is that you're just trying to get to the</p> <p>18 per-unit price. And so if that's what that's</p> <p>19 referring to, then you have everything you need to</p> <p>20 get to the per-unit price.</p> <p>21 Q. Net of all discounts, rebates, or other</p> <p>22 allowances?</p>	<p>1 Q. So for -- the rebates we're talking about</p> <p>2 right now are rebates that might -- that would</p> <p>3 pertain to an end customer and not to a wholesaler;</p> <p>4 is that right?</p> <p>5 A. That's correct. For specific behaviors,</p> <p>6 "Buy ten of these and you'll get a rebate for one,"</p> <p>7 whatever the case may be.</p> <p>8 Q. So we won't -- We might see an accrual</p> <p>9 for that rebate in the direct data, but we won't</p> <p>10 see the actual final rebate that was paid?</p> <p>11 A. Correct.</p> <p>12 Q. Where's all that data?</p> <p>13 A. Where the -- the rebate that was finally</p> <p>14 paid?</p> <p>15 Q. Yes.</p> <p>16 A. I don't know. I can't speak to that.</p> <p>17 It's not within our data.</p> <p>18 Q. In the ordinary course of business, do</p> <p>19 Abbott employees rely upon the rebate accrual field</p> <p>20 in order to estimate the net price after rebates?</p> <p>21 A. I don't --</p> <p>22 MS. GEISLER: Objection, beyond the scope of</p>
Page 99	Page 101
<p>1 MS. GEISLER: Objection to form.</p> <p>2 BY THE WITNESS:</p> <p>3 A. The rebates are done outside of the</p> <p>4 system. There -- Discounts, we don't do. So yeah.</p> <p>5 Q. But when you say that the rebates are</p> <p>6 done outside of the system, are you saying that</p> <p>7 those rebates are not contained within the COP</p> <p>8 data?</p> <p>9 A. Yeah. I thought there was a rebate</p> <p>10 system outside as far as someone else testified</p> <p>11 where they calculate rebates.</p> <p>12 Q. Well, when you use the term "rebate," are</p> <p>13 you meaning wholesale or charge-backs?</p> <p>14 A. No. Charge-back data you have.</p> <p>15 Q. When you say "rebate," you're thinking of</p> <p>16 --</p> <p>17 A. Whatever we're doing the accrual for,</p> <p>18 those rebates.</p> <p>19 Q. Well, my understanding is there's</p> <p>20 accruals for charge-backs as well.</p> <p>21 A. Yes, and we gave you the charge-back</p> <p>22 data.</p>	<p>1 the notice.</p> <p>2 BY THE WITNESS:</p> <p>3 A. I don't know what people do with that</p> <p>4 value if they do anything with it. I know that it</p> <p>5 was used as an accrual by the -- by HPD for where</p> <p>6 they thought they might pay rebates or</p> <p>7 charge-backs. But beyond that, I don't know if</p> <p>8 other people at Abbott used it for anything.</p> <p>9 Q. All right. Let's move to 31. And this</p> <p>10 is asking about the rebate accrual field. Is it</p> <p>11 your understanding that the value in that field is</p> <p>12 based upon an average calculation derived from the</p> <p>13 charge-back system?</p> <p>14 A. For the wholesaler customers, yes.</p> <p>15 Q. And what about for the end-user customer</p> <p>16 rebates?</p> <p>17 A. My understanding is that it's -- it's the</p> <p>18 -- it's an accrual for the amount that we think we</p> <p>19 will pay them for rebates for whatever rebate</p> <p>20 programs we have going at that time for that</p> <p>21 customer for the products that they're buying.</p> <p>22 It's also GPO management fees -- or can be.</p>

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<p style="text-align: right;">Page 134</p> <p>1 to those transactions, the file can be pushed 2 through the next night with those original 3 transactions. But that would be their first time 4 through. Otherwise, there are some -- like at 5 month end, if transactions reject, we like to close 6 the month with all the transactions in. Vicky may 7 have to go in and do a manual entry into COP to 8 represent those transactions. And then they would 9 have a bill type 12 -- I'm sorry, 11. 10 Q. All right. But what if down the road, 11 the customer came back and pointed out that there 12 was some type of an error in the quantity or the 13 amount. When that correction is made, does that 14 generate a new transaction? 15 A. Yes, it would be a credit coming through. 16 Q. And it will reference the same invoice? 17 A. If there's an invoice to reference, then 18 -- Well, in AES, they can issue it in reference to. 19 In OPS, I'm not sure. I think it would have just 20 been some comments that they would have added, 21 which aren't captured in our data. 22 Q. Also on the indirect data, Exhibit 2, the</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. So we won't see, for example, an end-user 2 customer that bought all of their product during 3 the course of the year on an indirect basis, 4 through a wholesaler, and earning a 2 percent 5 performance rebate, we won't see the payment of 6 that 2 percent performance rebate as a direct 7 transaction reflecting the credit in the amount of 8 the rebate? 9 A. No. 10 Q. That's all -- Is that in the ARM system? 11 A. I don't think so. I don't know where 12 that would go because it would have to go through 13 COP to get into the ARM system. I don't know how 14 the rebates are paid out. 15 Q. But there must be a whole separate system 16 to track that we're expecting this kind of -- you 17 know, a particular payment from a customer, that 18 they paid on a timely basis so they get the 1 19 percent discount and then at the end of the year, 20 if a rebate is approved, a check is mailed to them 21 for the amount of the rebate. Somewhere there's a 22 system that tracks all that?</p>
<p style="text-align: right;">Page 135</p> <p>1 very last field, it's called the customer rebate 2 discount. 3 A. Yes. 4 Q. That's an accrual of the potential 5 performance rebate that might be earned by the 6 end-user customer, right? 7 A. Correct. And it could also have the GPO 8 fees in it as well. 9 Q. Okay. But the charge-back itself doesn't 10 go in there? 11 A. No. 12 Q. And then the ultimate process of 13 evaluating whether or not the rebate that was 14 accrued here should actually be paid to the 15 customer is a manual process done afterwards, 16 right? 17 A. Yeah. My understanding is it's done in 18 Excel or something. 19 Q. Would those -- Once that money is 20 actually paid to the end customer as a rebate, does 21 it show up in the direct data? 22 A. No.</p>	<p style="text-align: right;">Page 137</p> <p>1 MS. GEISLER: Objection to form. 2 BY THE WITNESS: 3 A. I don't know if paid on a timely basis 4 has anything to do with the rebates -- but it is 5 all tracked. My understanding is there's a couple 6 people, that's all they do, are the rebates, 7 tracking and managing that process. 8 Q. All right. And I didn't mean to mix the 9 two different things together. But on -- A 10 standard term at Abbott is 1 percent net 30; is 11 that right? 12 A. There -- 13 MS. GEISLER: Objection, beyond the scope of 14 the notice. 15 BY THE WITNESS: 16 A. There's multiple terms codes. There's 17 not a standard 1 percent 10 net 30; 2 percent net 18 30; net 30 only. There's a lot of different terms 19 codes. 20 Q. That customer rebate discount field that 21 we were just talking about, that's a field that's 22 populated by Abbott, isn't it?</p>

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EXHIBIT 22

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-12257-PBS
)
THIS DOCUMENT RELATES TO:)
)
United States of America,) Hon. Patti Saris
ex rel. Ven-a-Care of the)
Florida Keys, Inc., v.)
Abbott Laboratories, Inc.,)
and Hospira, Inc.)
CIVIL ACTION NO. 06-11337-PBS)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-CV-12257-PBS
)
THIS DOCUMENT RELATES TO:)
) Judge Patti B. Saris
State of Arizona v. Abbott)
Labs., et al.)
Civil Action No. 06-CV-11069-PBS)

ORAL AND VIDEOTAPED DEPOSITION OF
GERALD T. EICHHORN
April 24, 2007

HIGHLY CONFIDENTIAL

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<p style="text-align: right;">Page 38</p> <p>1 MS. CITERA: Objection to form.</p> <p>2 A. That does not -- price to distributor.</p> <p>3 That -- that doesn't ring a bell.</p> <p>4 Q. (BY MR. ANDERSON) Are you familiar with a</p> <p>5 term known as "price to chain warehouse"?</p> <p>6 A. No.</p> <p>7 MS. CITERA: Objection to the form.</p> <p>8 Q. (BY MR. ANDERSON) You're not familiar with</p> <p>9 any kind of industry jargon or description for "price</p> <p>10 to chain warehouse," are you?</p> <p>11 MS. CITERA: Objection to form.</p> <p>12 A. No.</p> <p>13 Q. (BY MR. ANDERSON) Are you familiar with a</p> <p>14 term known as "direct price to pharmacy"?</p> <p>15 MS. CITERA: Objection to form.</p> <p>16 A. No.</p> <p>17 Q. (BY MR. ANDERSON) Are you familiar with any</p> <p>18 kind of jargon or industry term of art that is</p> <p>19 synonymous with "direct price to pharmacy"?</p> <p>20 A. Not to my --</p> <p>21 MS. CITERA: Objection to form.</p> <p>22 A. Not to my knowledge.</p> <p>23 Q. (BY MR. ANDERSON) Are you familiar with a</p> <p>24 term known as "direct price"?</p> <p>25 MS. CITERA: Objection to the form.</p>	<p style="text-align: right;">Page 40</p> <p>1 MS. CITERA: Objection to the form.</p> <p>2 A. To my knowledge, I don't think those are</p> <p>3 synonymous terms.</p> <p>4 Q. (BY MR. ANDERSON) Is "trade price"</p> <p>5 synonymous with "direct price"?</p> <p>6 MS. CITERA: Objection to form.</p> <p>7 A. Is trade price synonymous -- you know, I</p> <p>8 don't -- to my knowledge, I don't think so. I</p> <p>9 don't --</p> <p>10 Q. (BY MR. ANDERSON) Are you --</p> <p>11 A. I couldn't say for sure.</p> <p>12 Q. Sorry. I didn't mean to cut you off there.</p> <p>13 Are you familiar with a term at Abbott</p> <p>14 known as "trade price"?</p> <p>15 MS. CITERA: Objection to form.</p> <p>16 A. Trade price. I think -- trade price, in my</p> <p>17 mind, when I think of that, from that time frame, may</p> <p>18 have been synonymous with wholesaler acquisition price</p> <p>19 or wholesaler price.</p> <p>20 Q. (BY MR. ANDERSON) Would you consider "trade</p> <p>21 price" to be synonymous with "RxLink acquisition</p> <p>22 price" or "RxLink WAC"?</p> <p>23 MS. CITERA: Objection to the form.</p> <p>24 A. To my knowledge, I -- RxLink price was always</p> <p>25 a separate contracted price with the wholesaler. So,</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Direct price. I think in our connotation we</p> <p>2 use direct price from -- in the meaning price that the</p> <p>3 hospital purchased directly from Abbott through our</p> <p>4 customer service area.</p> <p>5 Q. (BY MR. ANDERSON) Are you familiar with</p> <p>6 direct price outside of the hospital context?</p> <p>7 MS. CITERA: Objection to form.</p> <p>8 A. No, not to the best of my recollection.</p> <p>9 Q. (BY MR. ANDERSON) Are you familiar with a</p> <p>10 term known as "list price"?</p> <p>11 MS. CITERA: Objection to form.</p> <p>12 A. I'm familiar with list price.</p> <p>13 Q. (BY MR. ANDERSON) What does list price mean?</p> <p>14 A. List price would be the price in the Hospital</p> <p>15 Products catalog.</p> <p>16 Q. Is "list price" synonymous with "direct</p> <p>17 price"?</p> <p>18 A. I don't think it's -- in my -- in my</p> <p>19 understanding, it's not synonymous with list price.</p> <p>20 Q. Is "list price" synonymous with "catalog</p> <p>21 price"?</p> <p>22 A. I would say that list price would be</p> <p>23 synonymous with catalog price.</p> <p>24 Q. Is "list price" synonymous with "trade</p> <p>25 price"?</p>	<p style="text-align: right;">Page 41</p> <p>1 to my knowledge, I don't think those were used</p> <p>2 synonymously with other -- other type -- any of these</p> <p>3 pricing terms that we're talking about.</p> <p>4 Q. (BY MR. ANDERSON) Are you aware that</p> <p>5 internally Abbott referred to WAC and RxLink WAC</p> <p>6 interchangeably?</p> <p>7 MS. CITERA: Objection to form.</p> <p>8 A. To my knowledge, I don't think Abbott</p> <p>9 referred to those terms interchangeably.</p> <p>10 Q. (BY MR. ANDERSON) Are you aware that "trade"</p> <p>11 was, basically, a term that referred to the wholesaler</p> <p>12 class of trade?</p> <p>13 MS. CITERA: Objection to form.</p> <p>14 A. Was I aware that trade was used to refer to</p> <p>15 wholesalers?</p> <p>16 Q. (BY MR. ANDERSON) Yes.</p> <p>17 A. I think that was a -- it may have been a more</p> <p>18 encompassing term. I couldn't exactly tell you</p> <p>19 what -- how everybody may have used that term. It may</p> <p>20 have been used by some folks as synonymous with</p> <p>21 wholesaler.</p> <p>22 Q. How did you understand the term "trade" to</p> <p>23 characterize Abbott customers? Was it just</p> <p>24 wholesalers or was it wholesalers and distributor or</p> <p>25 other?</p>

11 (Pages 38 to 41)

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<p style="text-align: right;">Page 74</p> <p>1 Products segment that I worked on for our catalog 2 prices. We had a number of customers that purchased 3 at list price, so that would be an inflationary 4 increase that we had looked to get. And for our 5 government Federal Supply Schedule contract, there 6 were a number of steps that you would have to go 7 through to look for any inflationary increase from 8 what I recall. First you would have to make sure that 9 the government received all the best price 10 requirements and then if you took a catalog increase, 11 you were also eligible to ask for an increase on the 12 Federal Supply Schedule contract as well. 13 Q. (BY MR. ANDERSON) When you say that, "We had 14 a number of sales at list price," what are you 15 referring to? 16 A. In the Hospital Products Division we had 17 customers who bought product at list price or at 18 catalog price. 19 Q. Is it true that that was a relatively rare 20 phenomenon? 21 MS. CITERA: Objection to form. 22 A. I don't know if I would say it was rare. I 23 think at one point I remember the number being about 24 four million dollars in sales. 25 Q. (BY MR. ANDERSON) Out of what, about a</p>	<p style="text-align: right;">Page 76</p> <p>1 again, it depends on which business or -- it's 2 difficult to look and say generalities. There were 3 certain products that may have had a lot of list price 4 sales that may have been more significant to that 5 actual business. So -- 6 Q. (BY MR. ANDERSON) What about for products 7 where there were no list price sales, why did Abbott 8 go to the trouble of increasing list prices where they 9 had no sales? 10 MS. CITERA: Objection to form. 11 A. You know, I don't know. I couldn't -- I 12 couldn't say. 13 Q. (BY MR. ANDERSON) Can you think of any 14 business reason whatsoever to raise list prices 15 annually for products where there are no list price 16 sales? 17 MS. CITERA: Objection to form. 18 A. Can I think of any reasons why? 19 Q. (BY MR. ANDERSON) Yes, sir. 20 A. I think it would -- 21 MS. CITERA: Objection to form. 22 A. In -- in -- I think it would be to keep all 23 of the products in a certain category aligned in a 24 certain product family. 25 Q. (BY MR. ANDERSON) I don't follow. Could you</p>
<p style="text-align: right;">Page 75</p> <p>1 billion dollars a year? 2 MS. CITERA: Objection to form. 3 A. I don't recall what the exact number was in 4 the mid-'90s. It was probably over a billion. 5 Q. (BY MR. ANDERSON) Right. So why was it that 6 Abbott was interested in those incremental sales of, 7 what, like maybe four percent? 8 MS. CITERA: Objection to form. 9 A. You know, again, speaking for the Hospital 10 Products business, I think it was important -- four 11 million dollars, or whatever the number, is still a 12 lot of money. It's a business. If we are looking to 13 maintain our profitability, we have to look at 14 existing business plus list price business. 15 Q. (BY MR. ANDERSON) Well, let's do the math. 16 If you had a hundred million dollars in sales and you 17 only did four million at list, that would be about 18 four percent of your sales, correct? 19 A. I think that sounds right. 20 Q. But Abbott in the mid-'90s was doing over a 21 billion dollars a year in Hospital Products sales. So 22 if they only did roughly four million at list price, 23 that would be like .4 percent of their sales, right? 24 MS. CITERA: Objection to form. 25 A. The math sounds correct. I think it's --</p>	<p style="text-align: right;">Page 77</p> <p>1 explain that? What do you mean keep them in line in a 2 certain product family? 3 A. Well, even within the Hospital Products 4 Division we probably had 30 different -- or more 5 different business sections. So they were broken down 6 into product families or product groups. So in order 7 to keep consistency between list prices, you would 8 increase all of the prices within a certain family or 9 within the entire product line. 10 Q. Why would it be important to raise all the 11 list prices if certain drugs within a product family 12 are not sold at list price? 13 MS. CITERA: Objection to form. 14 A. You know, I don't know. I couldn't say. I 15 couldn't recall exactly what the methodology or why 16 that would occur. 17 Q. (BY MR. ANDERSON) Isn't it true that when -- 18 to the extent Abbott took annual price increases on 19 its list prices, that typically those price increases 20 were around four percent? 21 MS. CITERA: Objection to the form. 22 A. For my knowledge during the contract -- my 23 contract marketing era for the hospital-based catalog, 24 I recall the increases were approximately four percent 25 or close to CPI, or whatever the inflationary index</p>

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<p style="text-align: right;">Page 78</p> <p>1 was.</p> <p>2 Q. (BY MR. ANDERSON) And so to the extent</p> <p>3 Abbott went to the trouble each year of raising list</p> <p>4 prices, those four percent annual increases presumably</p> <p>5 would garner four percent incremental revenues if</p> <p>6 there were any list sales, correct?</p> <p>7 MS. CITERA: Objection to form.</p> <p>8 A. That could -- that could occur as long as</p> <p>9 those customers continued to buy at list price, unless</p> <p>10 they switched to a contract --</p> <p>11 Q. (BY MR. ANDERSON) And then --</p> <p>12 A. -- price.</p> <p>13 Q. -- if we wanted to look at the -- those</p> <p>14 incremental annual revenues that were garnered through</p> <p>15 a list price sale in relationship to overall HPD sales</p> <p>16 of over a billion dollars, you would multiply that .4</p> <p>17 percent times four percent and you'd get something</p> <p>18 like one-thousandth percent incremental revenue,</p> <p>19 right?</p> <p>20 MS. CITERA: Objection to form.</p> <p>21 A. I think -- I don't know that we looked at it</p> <p>22 on a percent basis. I think any incremental dollars</p> <p>23 were important to the division. So from a dollar</p> <p>24 perspective, I think it contributed to each of the --</p> <p>25 some businesses more than the other, but I think it</p>	<p style="text-align: right;">Page 80</p> <p>1 the federal government when the federal government</p> <p>2 bought drugs, such as through the veterans?</p> <p>3 MS. CITERA: Objection to form.</p> <p>4 A. I think one of the reasons, or one of the</p> <p>5 reasons that I knew of, for taking that increase was</p> <p>6 to then be able to apply for the Federal Supply</p> <p>7 Schedule increase. It didn't guarantee that we</p> <p>8 received it. There were a number of other parameters</p> <p>9 that we would have to go through first. My</p> <p>10 understanding was, though, without showing a catalog</p> <p>11 increase that we wouldn't be able to even apply or</p> <p>12 look to take an increase on the government business.</p> <p>13 Q. (BY MR. ANDERSON) How often, if at all, did</p> <p>14 Abbott actually raise HPD product prices to the</p> <p>15 federal government through, for instance, the Veterans</p> <p>16 Administration?</p> <p>17 MS. CITERA: Objection to the form.</p> <p>18 A. You know, I can't -- I can't give -- I can</p> <p>19 speak for my experience with the Hospital Products for</p> <p>20 the -- for the three years or so that I worked in that</p> <p>21 area. I think we applied for the increases for at</p> <p>22 least one of the years. I think -- I don't recall the</p> <p>23 outcome of that.</p> <p>24 Q. (BY MR. ANDERSON) So you're not able to</p> <p>25 testify that Abbott ever actually raised the HPD</p>
<p style="text-align: right;">Page 79</p> <p>1 was an important number.</p> <p>2 Q. (BY MR. ANDERSON) So even a thousandth of a</p> <p>3 percent of incremental revenue justified raising list</p> <p>4 prices each year?</p> <p>5 MS. CITERA: Objection to form.</p> <p>6 A. I can't say that that's the only reason that</p> <p>7 we adjusted list price. I mean, those were the</p> <p>8 reasons that I recall.</p> <p>9 Q. (BY MR. ANDERSON) What was the other reason?</p> <p>10 MS. CITERA: Objection to form.</p> <p>11 A. Well, my understanding was that in order to</p> <p>12 apply for our inflationary adjustment with our Federal</p> <p>13 Supply Schedule contract, we also had to show that we</p> <p>14 were taking catalog increases.</p> <p>15 Q. (BY MR. ANDERSON) So is it true that taking</p> <p>16 list price increases was a mechanism by which you</p> <p>17 could raise the prices you charged the federal</p> <p>18 government when the federal government bought directly</p> <p>19 from Abbott, for instance, the veterans?</p> <p>20 MS. CITERA: Objection to form.</p> <p>21 A. Could you repeat that?</p> <p>22 Q. (BY MR. ANDERSON) Is it true that you're</p> <p>23 testifying that one of the reasons for increasing list</p> <p>24 price beyond garnering a thousandth of a percent of</p> <p>25 incremental revenue was to justify raising prices to</p>	<p style="text-align: right;">Page 81</p> <p>1 prices to the federal government, for instance,</p> <p>2 through the Veterans Administration when the federal</p> <p>3 government bought drugs directly?</p> <p>4 MS. CITERA: Object to the form.</p> <p>5 A. I don't know that -- I can't -- I don't</p> <p>6 recall the outcome of those submissions.</p> <p>7 Q. (BY MR. ANDERSON) Can you think of any other</p> <p>8 business reason for raising list prices?</p> <p>9 MS. CITERA: Objection to form.</p> <p>10 A. No, nothing comes to mind.</p> <p>11 Q. (BY MR. ANDERSON) Why is it that Abbott</p> <p>12 reported its annual list price increases to the price</p> <p>13 compendia, such as First DataBank?</p> <p>14 MS. CITERA: Objection to form.</p> <p>15 A. I don't know that I could say why.</p> <p>16 Q. (BY MR. ANDERSON) Can you think of any</p> <p>17 business reason at all why Abbott would report annual</p> <p>18 list price changes that were causing the list prices</p> <p>19 to go up to First DataBank?</p> <p>20 MS. CITERA: Objection to form.</p> <p>21 A. To the best of my knowledge, I don't know</p> <p>22 why.</p> <p>23 Q. (BY MR. ANDERSON) Are you aware that list</p> <p>24 price being reported by Abbott to First DataBank</p> <p>25 triggered new AWP's on Abbott products to be published</p>

21 (Pages 78 to 81)

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<p style="text-align: right;">Page 82</p> <p>1 by First DataBank?</p> <p>2 MS. CITERA: Objection to form.</p> <p>3 A. At this time I wasn't aware when I was</p> <p>4 working in the contract marketing area.</p> <p>5 Q. (BY MR. ANDERSON) Have you recently reviewed</p> <p>6 documents that reflect that back in the '95 time frame</p> <p>7 you were aware that list prices as reported by Abbott</p> <p>8 to First DataBank caused new AWP's to be published by</p> <p>9 First DataBank?</p> <p>10 MS. CITERA: Objection to form.</p> <p>11 A. I don't recall if I -- I haven't</p> <p>12 specifically -- I haven't looked at documents. I</p> <p>13 reviewed information with counsel.</p> <p>14 Q. (BY MR. ANDERSON) When you say "reviewed</p> <p>15 information," you're distinguishing from reviewing</p> <p>16 documents that were created at or near the time that</p> <p>17 you were working in the Contract Marketing Department?</p> <p>18 MS. CITERA: Objection to form.</p> <p>19 A. I would say --</p> <p>20 MS. CITERA: And I would just counsel</p> <p>21 you not to reveal any of our discussions.</p> <p>22 THE WITNESS: Sure.</p> <p>23 A. I would -- I would say that they were</p> <p>24 documents.</p> <p>25 Q. (BY MR. ANDERSON) Okay. And in reviewing</p>	<p style="text-align: right;">Page 84</p> <p>1 MS. CITERA: Object to the form.</p> <p>2 A. I don't recall that I knew back in '95</p> <p>3 that -- that that's how it worked.</p> <p>4 Q. (BY MR. ANDERSON) Okay. Well, we'll get to</p> <p>5 some documents in a little while that may refresh your</p> <p>6 recollection.</p> <p>7 Now, you mentioned earlier that with</p> <p>8 respect to Exhibit 731, you primarily focused on the</p> <p>9 second page; is that correct?</p> <p>10 A. I referenced the second and third pages,</p> <p>11 which had a number of the group purchasing</p> <p>12 organization prices.</p> <p>13 Q. Right. And specifically focusing on the</p> <p>14 third page that you were familiar with, you see toward</p> <p>15 the right-hand side two columns titled "All Group</p> <p>16 High" and "All Group Low"?</p> <p>17 A. Yes.</p> <p>18 Q. And what do you understand those terms to</p> <p>19 mean?</p> <p>20 MS. CITERA: Objection to form.</p> <p>21 MR. ANDERSON: What's the objection,</p> <p>22 Toni?</p> <p>23 MS. CITERA: Is your -- are you asking</p> <p>24 what does he know generally or what does he know as to</p> <p>25 these documents what the term means?</p>
<p style="text-align: right;">Page 83</p> <p>1 those documents, did you note that apparently back in</p> <p>2 '95 you were aware that list prices reported by Abbott</p> <p>3 caused new AWP's to be published on Abbott products by</p> <p>4 First DataBank?</p> <p>5 MS. CITERA: Objection to form.</p> <p>6 A. I can't say that -- as I recall, that I knew</p> <p>7 at that time that the -- that it caused -- reporting</p> <p>8 those prices caused new information to be published.</p> <p>9 What I recall, and without looking at the documents,</p> <p>10 I'm recollecting what it said, that I think maybe that</p> <p>11 it was a source. I didn't necessarily know that, you</p> <p>12 know, it was published or republished.</p> <p>13 Q. (BY MR. ANDERSON) When you say it was a</p> <p>14 source, you mean First DataBank was a source for AWP's</p> <p>15 that were increased when Abbott reported increasing</p> <p>16 list prices?</p> <p>17 MS. CITERA: Objection to the form.</p> <p>18 A. Could you state that again?</p> <p>19 Q. (BY MR. ANDERSON) Is it true, sir, that you</p> <p>20 just testified that you knew that AWP was a source --</p> <p>21 I mean, pardon me. I'll rephrase.</p> <p>22 Is it true, sir, that you knew back in</p> <p>23 '95 that First DataBank was a source for new AWP's that</p> <p>24 were caused to be created when Abbott reported list</p> <p>25 price increases to First DataBank?</p>	<p style="text-align: right;">Page 85</p> <p>1 MR. ANDERSON: I just asked him what the</p> <p>2 terms mean.</p> <p>3 MS. CITERA: It's this document?</p> <p>4 MR. ANDERSON: It's straightforward</p> <p>5 enough.</p> <p>6 MS. CITERA: In this document?</p> <p>7 MR. ANDERSON: It's not in the document.</p> <p>8 It's what do the terms mean.</p> <p>9 MS. CITERA: Well, I'm going to object</p> <p>10 then.</p> <p>11 MR. ANDERSON: Well, that's frivolous.</p> <p>12 MS. CITERA: Well ...</p> <p>13 Q. (BY MR. ANDERSON) Sir, do you know what the</p> <p>14 term "all group low" and "all group high" mean?</p> <p>15 MS. CITERA: Same objection.</p> <p>16 A. In this document it appears that they mean</p> <p>17 what we would have wanted to look from the file was</p> <p>18 what was the lowest GPO price and then what was the</p> <p>19 highest GPO price. So "all group low" being the low</p> <p>20 and "all group high" being the highest price that we</p> <p>21 had out there at that time.</p> <p>22 Q. (BY MR. ANDERSON) And you limited your</p> <p>23 answer to this document. Do you have any reason to</p> <p>24 believe that the terms "all group low" and "all group</p> <p>25 high" were utilized differently in other resource</p>

22 (Pages 82 to 85)

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1 or an add-on to a sheet that someone else had sent.
 2 Q. (BY MR. ANDERSON) Well, sir, it's not just
 3 it could have been a response, you actually did fax
 4 this spreadsheet to Dave Brincks, correct?
 5 MS. CITERA: Objection to form.
 6 A. It appears that I faxed it to him.
 7 Q. (BY MR. ANDERSON) Okay. And you did that
 8 because Dave needed help from you in setting new list
 9 prices on these Vancomycin products, correct?
 10 MS. CITERA: Objection to the form.
 11 A. I don't know that it was because Dave wanted
 12 to set list prices, other than that he had a request
 13 to change them and wanted to know how we would go
 14 about doing that.
 15 Q. (BY MR. ANDERSON) And in turn, he relied
 16 upon you as a person in contract marketing to know how
 17 to do that, correct?
 18 MS. CITERA: Objection to form.
 19 A. Dave asked me for help with the process as to
 20 who else we would need to contact in the -- in the
 21 Hospital Products contract marketing area to -- to
 22 facilitate this change.
 23 Q. (BY MR. ANDERSON) And is the note that's
 24 part of the spreadsheet on the third page of Exhibit
 25 362 in essence the advice you provided to Dave as to

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1 how to set a new list price in AWP?
 2 MS. CITERA: Objection to form.
 3 A. Again, we were not involved with setting AWP
 4 and I don't recall that part where I would have gotten
 5 access to that information. Again, this would have
 6 been a document I may have sent to him with the
 7 suggestion on where we should move the list price.
 8 Q. (BY MR. ANDERSON) Okay. Well, let's --
 9 A. Or how we should change it.
 10 Q. Given that limitation that you inserted, how
 11 is it that you came to suggest to Dave that you would
 12 set a list price at five percent over RxLink?
 13 MS. CITERA: Objection to form.
 14 A. You know, I don't recall what my exact
 15 thought process was back then.
 16 Q. (BY MR. ANDERSON) Well, was there a standard
 17 rule of thumb that list price was set at five percent
 18 over RxLink?
 19 MS. CITERA: Objection to form.
 20 A. I don't recall that there was a specific
 21 process or a specific guideline to set price over
 22 RxLink.
 23 Q. (BY MR. ANDERSON) Did you have some basic
 24 reason for suggesting that list price on these three
 25 Vancomycin products be set at five percent over RxLink

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1 WAC?
 2 MS. CITERA: Objection to form.
 3 A. As I recollect back, the best of my knowledge
 4 the thought process was to set it at a price higher
 5 than any of our existing contracted customers had as
 6 to not create any pricing discrepancies.
 7 Q. (BY MR. ANDERSON) And in 1995, particularly
 8 March of '95, the highest price that any customer was
 9 charged on these three Vancomycin products was the
 10 RxLink WAC, correct?
 11 MS. CITERA: Objection to form.
 12 A. You know, I don't know that. I couldn't say
 13 that. I don't know what the highest price -- I don't
 14 know that these prices were even correct at this time,
 15 but I couldn't say what the highest price was.
 16 Q. (BY MR. ANDERSON) I'm not asking you, sir,
 17 to recite at the moment what the highest price was in
 18 '99. I'm asking that given your testimony here today,
 19 isn't it true that you selected a list price at five
 20 percent over RxLink WAC because the highest price that
 21 was being charged to any customer on these three
 22 Vancomycin products was most likely RxLink WAC?
 23 MS. CITERA: Objection to form.
 24 A. You know, I don't know that I could -- I
 25 don't know that I could say that. Could have been

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1 other customers that were billed at -- at direct
 2 prices purchasing direct from Abbott, which would have
 3 had -- which would have been billed at the current
 4 list price.
 5 Q. Why do you say that?
 6 A. I mean, it's possible. I don't -- I don't
 7 recall.
 8 Q. Well, would you -- if there had been direct
 9 prices that were higher than your suggested list
 10 price, wouldn't that be a problem?
 11 MS. CITERA: Objection to form.
 12 A. Could you please state that again, please?
 13 Q. (BY MR. ANDERSON) You wouldn't have
 14 suggested a list price, sir, that was higher -- I
 15 mean, pardon me. I'll start over. Strike that and
 16 rephrase.
 17 Sir, you wouldn't have suggested a new
 18 list price that was lower than a direct price that was
 19 actually sold to a customer, would you?
 20 MS. CITERA: Objection to form.
 21 A. You know, I don't know. I can't say.
 22 Q. (BY MR. ANDERSON) Well, isn't it true that
 23 list price is the highest price that Abbott has on any
 24 product?
 25 MS. CITERA: Objection to form.

37 (Pages 142 to 145)

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1 A. To the best of my knowledge, I think that's
2 true for the -- for the Hospital Products arena.

3 Q. Right. And so given that knowledge, there's
4 no way you would have suggested a list price that was
5 lower than any direct price, correct?

6 MS. CITERA: Objection to form.

7 A. You know, I can't say. I don't recall
8 exactly what my thought process was.

9 Q. (BY MR. ANDERSON) Can you ever recall any
10 instance where you suggested a list price or, for that
11 matter, any Abbott list price on any product was ever
12 set below a direct price?

13 MS. CITERA: Objection to form.

14 A. As I said, I wasn't involved with list price,
15 in setting those, so I don't know that I can answer
16 that.

17 Q. (BY MR. ANDERSON) Why were you involved in
18 the setting or suggesting list price on these three
19 Vancomycin products in March of '95?

20 A. As a request from a colleague, who I had
21 known and he knew I worked in the hospital area, and
22 asked me if I could follow up on this.

23 Q. How did you know Dave Brincks prior to March
24 of '95?

25 A. We went to graduate school together.

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1 Q. So, basically, you-all knew one another
2 socially and he asked you for a favor, correct?

3 MS. CITERA: Objection to form.

4 A. I wouldn't say we knew each other socially.
5 We knew each other as classmates and he asked me how
6 we would go about adjusting the list price.

7 Q. (BY MR. ANDERSON) And did you consult with
8 anybody in suggesting the new list price?

9 A. To the -- to the best of my recollection, I
10 probably would have talked to the marketing manager to
11 get his feedback on if it would impact anything.

12 Q. And that marketing manager would have been
13 Mark Sebree, correct?

14 A. It may have been Mark at that -- based on
15 that time frame.

16 Q. Did you review any information provided by
17 Mark Sebree to you?

18 MS. CITERA: Objection to form.

19 A. I don't recall if I reviewed any information
20 from Mark. I may have.

21 Q. (BY MR. ANDERSON) Look at the second page of
22 Exhibit 362, sir. Are you familiar with that page in
23 any way?

24 A. The second page?

25 Q. Yes.

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1 A. No, I am not.

2 Q. Do you know whose handwriting that is?

3 A. I do not know whose handwriting that is.

4 Q. Are you familiar with Mark Sebree's
5 handwriting?

6 A. No, I can't say I am.

7 Q. Did you see the second page of Exhibit 362 in
8 preparing to testify?

9 A. I believe I did.

10 Q. Do you agree that the second page of Exhibit
11 362 appears to be a listing and comparison of AWP's on
12 various competitive Vancomycin products?

13 MS. CITERA: Objection to form.

14 A. It appears to be a listing. Appears to be a
15 sheet generated. You know, I couldn't determine the
16 source and tell you whose -- whose document it was.

17 Q. (BY MR. ANDERSON) I didn't ask you for the
18 source, sir. Do you agree that it appears to be a
19 listing of competitive Vancomycin AWP's?

20 MS. CITERA: Objection to the form.

21 A. It appears that it has a number. I'm not
22 sure it's comprehensive with all Vancomycin, but it
23 does list the AWP's by product.

24 Q. (BY MR. ANDERSON) Do you agree that the AWP's
25 listed for Abbott's products are the highest AWP's of

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1 all the Vancomycins?

2 MS. CITERA: Objection to form.

3 A. Yeah, without studying it in detail. I mean,
4 it appears that Abbott has a higher AWP in certain --
5 in a number of cases there.

6 Q. (BY MR. ANDERSON) And isn't it true, also,
7 that the Vancomycin AWP's on Abbott's products are at
8 least roughly double and sometimes triple or quadruple
9 the competitive AWP's?

10 MS. CITERA: Objection to form.

11 A. It's difficult, without looking at the actual
12 one gram versus five gram versus half a milligram.
13 They do appear higher. I don't know about the number
14 of times higher.

15 Q. (BY MR. ANDERSON) Do you ever recall seeing
16 documentation similar to the second page of Exhibit
17 362 in evaluating suggested list prices for
18 Vancomycin?

19 MS. CITERA: Objection, overbroad.

20 A. To the best of my knowledge, I don't recall
21 seeing this document when evaluating.

22 Q. (BY MR. ANDERSON) Looking at the third page
23 of Exhibit 362, do you believe that that is Dave
24 Brincks' handwriting, sir, up in the right-hand
25 portion of the page next to the --

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<p style="text-align: right;">Page 182</p> <p>1 MS. CITERA: Objection to form.</p> <p>2 A. You know, I don't recall who the customer</p> <p>3 was.</p> <p>4 Q. (BY MR. ANDERSON) You understand what Abbott</p> <p>5 Home Infusion Services does, don't you?</p> <p>6 MS. CITERA: Objection to form.</p> <p>7 A. Understand what they did?</p> <p>8 Q. (BY MR. ANDERSON) Yeah.</p> <p>9 A. I'm not extremely familiar with their</p> <p>10 business model.</p> <p>11 Q. Well, you understood at a basic level that</p> <p>12 Abbott Home Infusion partnered with providers and</p> <p>13 submitted reimbursement claims and shared in the</p> <p>14 proceeds, don't you?</p> <p>15 MS. CITERA: Objection to form.</p> <p>16 A. I can't say with certainty that I knew that.</p> <p>17 I knew they had -- that they worked on setting up</p> <p>18 pharmacies and different partnerships with</p> <p>19 organizations. Other -- the exact detail, I don't</p> <p>20 recollect.</p> <p>21 Q. (BY MR. ANDERSON) Let's continue on in</p> <p>22 Exhibit 286. You write, "Please notify Redbook and</p> <p>23 Medispan of these changes ASAP. They are the sources</p> <p>24 for creating the AWP that is important to Alternate</p> <p>25 Site."</p>	<p style="text-align: right;">Page 184</p> <p>1 A. You know, I don't know if I knew that for a</p> <p>2 fact or if someone had told me that and I put that in</p> <p>3 the e-mail.</p> <p>4 Q. (BY MR. ANDERSON) Did you believe that, in</p> <p>5 fact, it was true that Redbook and Medi-Span were the</p> <p>6 sources of AWP information?</p> <p>7 MS. CITERA: Objection to form.</p> <p>8 A. You know, I don't know what I recall from</p> <p>9 back then on what the sources were.</p> <p>10 Q. (BY MR. ANDERSON) Well, you wouldn't have</p> <p>11 simply parroted something you heard from someone else</p> <p>12 if you thought it was false, would you?</p> <p>13 MS. CITERA: Objection to the form.</p> <p>14 A. No, I can't say -- I don't think I would have</p> <p>15 intentionally put anything false.</p> <p>16 Q. (BY MR. ANDERSON) It certainly wasn't your</p> <p>17 practice to include false statements in any e-mails,</p> <p>18 was it?</p> <p>19 MS. CITERA: Objection to form.</p> <p>20 A. You know, I can't say. Oftentimes statements</p> <p>21 are taken out of context or the exact meaning is not</p> <p>22 communicated, so I can't say that I had a thorough</p> <p>23 understanding, or even knowledge, of the Alternate</p> <p>24 Site business.</p> <p>25 Q. (BY MR. ANDERSON) Do you have any idea why</p>
<p style="text-align: right;">Page 183</p> <p>1 Did I read that correctly?</p> <p>2 A. Yes.</p> <p>3 Q. And is it true that back in March of '95 you</p> <p>4 knew that AWP was important to Alternate Site?</p> <p>5 MS. CITERA: Objection to form.</p> <p>6 A. You know, I can't say that I knew that it was</p> <p>7 important to Alternate Site. As I read that -- this</p> <p>8 note, I can't remember what I was thinking or what the</p> <p>9 actual intent of what is written.</p> <p>10 Q. (BY MR. ANDERSON) Well, is it true that</p> <p>11 those two sentences I just read are true statements?</p> <p>12 A. You know, I don't know.</p> <p>13 MS. CITERA: Objection to form.</p> <p>14 A. I don't know if they are true statements or</p> <p>15 not. I can't comment enough and don't know enough</p> <p>16 about the Alternate Site business.</p> <p>17 Q. (BY MR. ANDERSON) Do you believe that those</p> <p>18 two sentences were false?</p> <p>19 MS. CITERA: Objection to form.</p> <p>20 A. I don't know. I can't say. I don't recall.</p> <p>21 It was 12 years ago when I wrote that note.</p> <p>22 Q. (BY MR. ANDERSON) Do you agree that back in</p> <p>23 1995 you knew that Redbook and Medi-Span were some of</p> <p>24 the sources of AWP information?</p> <p>25 MS. CITERA: Objection to form.</p>	<p style="text-align: right;">Page 185</p> <p>1 AWP's were important to Alternate Site back in 1995?</p> <p>2 MS. CITERA: Objection to form.</p> <p>3 A. Back at that point in time in 1995, I -- to</p> <p>4 my knowledge, I don't recall why it was important.</p> <p>5 Q. (BY MR. ANDERSON) Did Mark Sebree tell you</p> <p>6 why AWP's were important to Alternate Site?</p> <p>7 MS. CITERA: Objection to form.</p> <p>8 A. I can't speak to -- I don't recall Mark</p> <p>9 Sebree saying anything to me or having --</p> <p>10 Q. (BY MR. ANDERSON) Did Dave Brincks tell you</p> <p>11 that AWP's were important to Alternate Site?</p> <p>12 MS. CITERA: Objection to form.</p> <p>13 A. I don't know that Dave Brincks mentioned that</p> <p>14 AWP's were important to Alternate Site. I know he</p> <p>15 mentioned that making this change was something that</p> <p>16 came from one customer and it could have been</p> <p>17 important to that one customer and that was pretty</p> <p>18 much my understanding.</p> <p>19 Q. (BY MR. ANDERSON) Would Abbott typically</p> <p>20 make list price changes based on the complaints of one</p> <p>21 single customer?</p> <p>22 MS. CITERA: Objection to form.</p> <p>23 A. I don't think that we often -- or I don't</p> <p>24 recall making any other list price adjustments outside</p> <p>25 the normal process, annual process.</p>

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<p style="text-align: right;">Page 186</p> <p>1 Q. (BY MR. ANDERSON) And you were part of that</p> <p>2 annual process, correct?</p> <p>3 MS. CITERA: Objection to form.</p> <p>4 A. I was part of that annual process for</p> <p>5 different products at different times, yes.</p> <p>6 Q. (BY MR. ANDERSON) Over the years from the</p> <p>7 mid-'90s to, what, 2003?</p> <p>8 A. Approximately.</p> <p>9 MS. CITERA: Objection to form.</p> <p>10 Q. (BY MR. ANDERSON) Yeah. Now, if you could,</p> <p>11 sir, take a look at what's been marked in this case as</p> <p>12 Exhibit 69.</p> <p>13 MS. CITERA: Where is that?</p> <p>14 MR. WINTER: We are getting it here for</p> <p>15 you now.</p> <p>16 MS. CITERA: Okay.</p> <p>17 Q. (BY MR. ANDERSON) Do you recognize Exhibit</p> <p>18 69?</p> <p>19 A. It appears to be an e-mail from Jerrie</p> <p>20 Cicerale.</p> <p>21 Q. You're referring to the top of the page where</p> <p>22 Jerrie Cicerale is sending an e-mail to Harry Adams</p> <p>23 dated April 27, '95?</p> <p>24 A. Yes.</p> <p>25 Q. And it has -- this e-mail has the subject</p>	<p style="text-align: right;">Page 188</p> <p>1 time with Jerrie Cicerale?</p> <p>2 MS. CITERA: Objection to form.</p> <p>3 Q. (BY MR. ANDERSON) Pardon?</p> <p>4 A. Yes, I did. She was in the Contract</p> <p>5 Marketing Department as well.</p> <p>6 Q. And you were relatively friendly with Jerrie,</p> <p>7 correct?</p> <p>8 MS. CITERA: Objection to form.</p> <p>9 A. We had a cordial working relationship.</p> <p>10 Q. (BY MR. ANDERSON) And to the extent you</p> <p>11 could provide Jerrie with pricing information, from</p> <p>12 time to time you did it, correct?</p> <p>13 MS. CITERA: Objection to form.</p> <p>14 A. I'm not sure I understand the question.</p> <p>15 Q. (BY MR. ANDERSON) Well, I'll rephrase it.</p> <p>16 Jerrie worked in your department and you worked with</p> <p>17 her and you-all shared pricing information from time</p> <p>18 to time, correct?</p> <p>19 MS. CITERA: Objection to form.</p> <p>20 A. Jerrie worked in the contracting department,</p> <p>21 it was in our systems area, and was one of the</p> <p>22 administrators that kept track of all of our list</p> <p>23 numbers and pricing.</p> <p>24 Q. (BY MR. ANDERSON) And, accordingly, given</p> <p>25 that job duty, Jerrie was involved, for instance, in</p>
<p style="text-align: right;">Page 187</p> <p>1 line forward "Vanco List price," correct?</p> <p>2 A. FYI "Vanco List price," right.</p> <p>3 Q. And then looking at 286, isn't it true that,</p> <p>4 basically, 286 is the initial e-mail you sent with the</p> <p>5 subject Vanco list price?</p> <p>6 A. It appears that that's the same e-mail.</p> <p>7 Q. And that's the same e-mail that's at the</p> <p>8 bottom of this e-mail conversation that's shown on</p> <p>9 Exhibit 69, too, correct?</p> <p>10 A. They appear to be the same.</p> <p>11 Q. And, in fact, Jerrie Cicerale responded to</p> <p>12 your March 20th, '95 e-mail, correct?</p> <p>13 A. Yes. Just a few minutes after.</p> <p>14 Q. And she notified you that, "All the other</p> <p>15 price changes are effective 4/3/95 - I will be sending</p> <p>16 Redbook/MediSpan the prices changes as soon as I get</p> <p>17 the new catalog, hopefully sometime this week. I will</p> <p>18 include a change on these items effective on 4/3</p> <p>19 also."</p> <p>20 Did I read that correctly?</p> <p>21 A. Yes.</p> <p>22 Q. And then you respond in turn and say,</p> <p>23 "Thanks, Jer, for your help on this issue," correct?</p> <p>24 A. Yes.</p> <p>25 Q. Did you have business dealings from time to</p>	<p style="text-align: right;">Page 189</p> <p>1 maintaining the pricing, such as the Resource File on</p> <p>2 the system, correct?</p> <p>3 MS. CITERA: Objection to form.</p> <p>4 A. No, that's not correct. Jerrie Cicerale did</p> <p>5 not maintain the Resource File.</p> <p>6 Q. (BY MR. ANDERSON) What -- what pricing files</p> <p>7 did Jerrie Cicerale maintain?</p> <p>8 A. To my knowledge, Jerrie Cicerale kept track</p> <p>9 of all of the prices within our contracting system for</p> <p>10 the list price, the -- she also had the government</p> <p>11 price. She was in charge -- she could run price lists</p> <p>12 for any of our hospital-based products. So she would</p> <p>13 have other various duties adding list numbers and</p> <p>14 whatnot as well.</p> <p>15 Q. Did Jerrie Cicerale have job duties involving</p> <p>16 maintaining parameter prices, group prices, et cetera?</p> <p>17 MS. CITERA: Objection, form.</p> <p>18 A. I would say Jerrie Cicerale's role was that</p> <p>19 of the administrator of the system of ensuring that</p> <p>20 the appropriate price lists were run.</p> <p>21 Q. (BY MR. ANDERSON) Including price lists that</p> <p>22 showed available parameter pricing, for instance,</p> <p>23 correct?</p> <p>24 MS. CITERA: Objection to the form.</p> <p>25 A. I'm not sure if she would have run those</p>

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<p style="text-align: right;">Page 198</p> <p>1 contacted you about these list price changes, did you 2 feel like you were qualified to help him? 3 MS. CITERA: Object to the form. 4 A. Dave was looking for a source in the hospital 5 contract marketing area for HPD and he knew me and he 6 knew I could help identify how we could get those list 7 prices changed. 8 Q. (BY MR. ANDERSON) So all in all you did feel 9 like you were qualified to assist in changing the list 10 prices, correct? 11 MS. CITERA: Object to the form. 12 A. I would say I -- I -- since this was one of 13 the products within the injectable arena that was part 14 of my responsibility, that I would be able to find how 15 we could go -- who actually could make the changes and 16 how we could get those done. 17 Q. (BY MR. ANDERSON) And -- and who was it that 18 you thought you needed to contact to make sure these 19 list price changes were done correctly? 20 A. Based on my recollection, I thought it was 21 the marketing manager that I would consult with and 22 get his approval and then run it through the system. 23 Actually have, then, the changes implemented by Jerrie 24 Cicerale. 25 Q. And, in essence, that's what happened, you</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. (BY MR. ANDERSON) Harry Adams? 2 A. It may have been Harry Adams. 3 Q. Is there anybody else that you believe was 4 the one who contacted you and said that list prices 5 only changed on an annual basis? 6 A. I -- you know, to my knowledge it was -- it 7 most likely would have been Harry. 8 Q. And is that what you were doing in Exhibit 9 733 where you're writing to Harry and others and -- 10 and proposing new Vanco list prices that are higher 11 than the ones that you initially suggested back in 12 March of '95? 13 MS. CITERA: Objection to form. 14 A. This Exhibit 733, this possible spreadsheet 15 that I did, it appears that the person was suggesting 16 the new list prices from a May 4th meeting. 17 Q. (BY MR. ANDERSON) And do you know, sir, why 18 it is that you were suggesting that the new list 19 prices be an average of the prior list prices and the 20 suggested prices that you had recommended back in 21 March of '95? 22 MS. CITERA: Object to the form. 23 A. You know, I don't recall what the thought 24 processes were or, again, if, in fact, that -- that 25 was my spreadsheet as to how that rationale came</p>
<p style="text-align: right;">Page 199</p> <p>1 ended up communicating with Mark Sebree, he approved 2 of the list price changes, and in turn you 3 communicated those to Jerrie Cicerale and she reported 4 new list prices for the Vancos, correct? 5 MS. CITERA: Object to the form. 6 A. I don't recall what the end point was. I do 7 remember sending the information to Jerrie. I don't 8 recall if the changes were ever made or that they were 9 reversed back. 10 Q. (BY MR. ANDERSON) Well, you mentioned 11 reversed back. Do you have some memory of the fact 12 that the prices did not stay at the lower levels that 13 you suggested? 14 MS. CITERA: Object to the form. 15 A. To the best of my knowledge, what I recall 16 was someone from the hospital side came back to me in 17 the Trade Relations area and said that we don't change 18 list price except through the annual change process. 19 So I said, okay. I went back to Dave, from my 20 recollection, and told him that we need to change 21 these back. And that was my recollection, that we 22 moved them back to where they were originally. 23 Q. (BY MR. ANDERSON) Who told you that? 24 MS. CITERA: Object to the form. 25 A. It may have been our Trade Relations manager.</p>	<p style="text-align: right;">Page 201</p> <p>1 about. 2 Q. (BY MR. ANDERSON) If I understand your 3 testimony correctly, you're saying basically Harry, or 4 someone, most likely Harry, came to you and said, 5 "Mr. Eichhorn, we don't change list prices during the 6 middle of the year. We only do that on an annual 7 basis"; is that correct? 8 MS. CITERA: Objection to the form. 9 A. That would have been my understanding that 10 someone would have come to me and said, you know, we 11 don't change the list prices, so we need to change 12 them back. 13 Q. (BY MR. ANDERSON) Well, if that were the 14 case, sir, why didn't you in or about May 5th of '95 15 just simply suggest that the prior list prices be 16 reinstituted as opposed to suggesting an average list 17 price? 18 A. You know, I don't recall why or how those 19 conversations took place. 20 Q. That doesn't really seem to add up, does it? 21 MS. CITERA: Objection to form. 22 A. What doesn't add up? 23 Q. (BY MR. ANDERSON) Your memory of Mr. Adams 24 telling you to reinstitute the list prices and yet 25 your -- your suggestion on May 5th, '95 to create new</p>

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EXHIBIT 23

Baltimore, MD

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -
IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
THIS DOCUMENT RELATES TO)
U.S. ex rel. Ven-a-Care of) Judge Patti B. Saris
the Florida Keys, Inc.)
v.) Chief Magistrate
Abbott Laboratories, Inc.,) Judge Marianne B.
No. 06-CV-11337-PBS) Bowler
- - - - -

Videotaped 30(b)(6) deposition of
THE STATE OF MARYLAND DEPARTMENT OF HEALTH AND
MENTAL HYGIENE BY JOSEPH L. FINE

Baltimore, Maryland
Tuesday, December 9, 2008
9:00 a.m.

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Baltimore, MD

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1 A. Initially. And then Lederley was bought
2 out by Pfizer and -- that's how that works, you know.
3 Q. And you were on the advisory board of the
4 Medicaid Pharmacy Bulletin for a time?
5 A. Yes, I was.
6 Q. As best I understand, the first publication
7 was in 1987. Does that sound right?
8 A. That sounds about right.
9 Q. And you were on the advisory panel for how
10 long?
11 A. I believe three years.
12 Q. Were you on it after the three years were
13 up at any time?
14 A. Yes. Another two years. They did it in
15 rotation. I don't recall the second time.
16 Q. Now, where did the publishers of the
17 Medicaid Pharmacy Bulletin get their information?
18 A. From the Medicaid pharmacy administrators.
19 Q. So --
20 A. The panel got together and they discussed
21 what topics would be important to the other pharmacy
22 Medicaid administrators and then the company that

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1 published it would do their editorial work and write
2 up an article on this, do the investigation on it.
3 And then it would be submitted back to the panel for
4 review, editing and whatever before it would be
5 released.
6 Q. Did you find that those bulletins were a
7 useful source of information?
8 A. Yes, they were.
9 Q. They had very reliable information in them?
10 A. Absolutely.
11 Q. Do you know -- did you maintain copies of
12 those?
13 A. I did. Before I left I had a whole book on
14 it. I don't know -- I think I threw them out.
15 Q. When you left the department -- let me back
16 up.
17 A. I don't think I left it with the
18 department. I didn't.
19 Q. Did you take it with you?
20 A. I think I did and I think I then discarded
21 it.
22 Q. When did you throw them away?

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1 A. 2005.
2 Q. Why did you throw them away?
3 A. I was just cleaning. I just had a lot of
4 papers.
5 Q. Do you know how someone can get copies of
6 past issues of this publication?
7 A. You'd have to probably inquire with
8 Parexel. That was the last one -- it's no longer in
9 publication, by the way.
10 Q. Did anything take its place?
11 A. No.
12 Q. When you left the department what did you
13 do with your files that you had?
14 A. I left the files there.
15 Q. You didn't take anything with you?
16 A. No. Other than my own personal
17 information, personal articles.
18 Q. So you got to clean out your office and
19 start over. That sounds like a good idea to me. Any
20 other publications you can recall?
21 A. I don't know what you're asking.
22 Q. Relating to Medicaid pharmacy issues apart

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1 from the Green Sheets, Medicaid Pharmacy Bulletins and
2 the other ones we discussed.
3 A. No. Not that I can think of. Oh. There
4 is a compendia that comes out from the National
5 Pharmaceutical Council that does a survey of all
6 Medicaid programs. You may have --
7 Q. I know what you're talking about.
8 A. Right. Every state gets that and we used
9 it for review.
10 Q. I'd like to hand you what we've marked
11 previously as Abbott Exhibit 81. Mr. Fine, Abbott
12 Exhibit 81 is a document titled "Prescription drug
13 prices: Are we getting our money's worth? A majority
14 staff report of the Special Committee On Aging, United
15 States Senate." Do you see that?
16 A. I guess it's right before me.
17 Q. Okay. And have you seen this document
18 yourself before?
19 A. No.
20 Q. Do you know if the department followed the
21 work of the Special Committee On Aging, United States
22 Senate? To see if it helps your recollection at all

22 (Pages 82 to 85)

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<p>1 Q. Are you ready?</p> <p>2 A. Yes.</p> <p>3 Q. Mr. Fine, you testified a few minutes ago</p> <p>4 that you generally expect AWP to change over time; is</p> <p>5 that correct?</p> <p>6 A. Sure. Yes. From my experience I've seen</p> <p>7 it. Manufacturers always have price changes, either</p> <p>8 annually or semi-annually over the years.</p> <p>9 Q. I'll represent to you that this chart</p> <p>10 represents the AWP's reported by Dey to First Databank</p> <p>11 for ipratropium 25, the NDC number that's at the top</p> <p>12 here, between 1996 and 2005.</p> <p>13 A. I see it.</p> <p>14 Q. And do you see the blue line at the top?</p> <p>15 A. Yes, I do.</p> <p>16 Q. That number is Dey's AWP for ipratropium.</p> <p>17 A. Okay.</p> <p>18 Q. Do you see it remains constant at 71 cents?</p> <p>19 A. Yes. That's remarkable.</p> <p>20 Q. And is that inconsistent with what your</p> <p>21 understanding was?</p> <p>22 A. That's very much -- yes. It's inconsistent</p>	<p>1 A. -- when other vendors come into the</p> <p>2 marketplace I have seen and it's regular to understand</p> <p>3 that the price will go down because of the competitive</p> <p>4 nature of pricing for generic products.</p> <p>5 MS. MANGIARDI: Thank you. That's the only</p> <p>6 questions I had.</p> <p>7 THE VIDEOGRAPHER: Any more?</p> <p>8 This deposition concludes at 6:23 and</p> <p>9 consists of five tapes.</p> <p>10 (Whereupon, at 6:23 p.m. the videotaped</p> <p>11 deposition was adjourned.)</p> <p>12 * * * * *</p> <p>13</p> <p>14</p> <p>15 _____</p> <p>16 SIGNATURE OF THE WITNESS</p> <p>17 Subscribed and sworn to and before me</p> <p>18 this _____ day of _____, 20____.</p> <p>19</p> <p>20</p> <p>21 _____</p> <p>22 Notary Public</p>
Page 327	Page 329
<p>1 with my understanding of pharmacy and drug pricing.</p> <p>2 Q. And do you see the red line below which</p> <p>3 represents Dey's WAC for ipratropium. That price</p> <p>4 changes over time, correct?</p> <p>5 A. Yes, it did.</p> <p>6 Q. Is that more consistent with what you would</p> <p>7 expect to happen to the price?</p> <p>8 MS. YAVELBERG: Objection, form.</p> <p>9 A. I don't normally see a downward spiral when</p> <p>10 it comes to drug prices. What I see for drug</p> <p>11 prices -- unless the product was initially a single</p> <p>12 source innovator product and the patent was lost do I</p> <p>13 see the price could go down. But normally a product</p> <p>14 would not be reduced in price over time. It would</p> <p>15 increase.</p> <p>16 Q. And when you say the price, what price do</p> <p>17 you mean?</p> <p>18 A. Okay. Now, the issue is if we're talking</p> <p>19 about a single source product, is what I'm talking</p> <p>20 about. Ipratropium that is multiple source, meaning</p> <p>21 other vendors --</p> <p>22 Q. Correct.</p>	<p>1 UNITED STATES OF AMERICA)</p> <p>2</p> <p>3 STATE OF MARYLAND)</p> <p>4 I, JONATHAN WONNELL, a Notary Public in and</p> <p>5 for the State of Maryland, do hereby certify that the</p> <p>6 within transcript is a true and accurate record of the</p> <p>7 testimony under oath and other proceedings in the</p> <p>8 above-entitled matter.</p> <p>9 I further certify that I am not a relative,</p> <p>10 employee, attorney or counsel of any of the parties to</p> <p>11 this action and that I am in no way interested in the</p> <p>12 outcome of this matter.</p> <p>13 IN WITNESS WHEREOF, I have hereunto set my</p> <p>14 hand this _____ day of _____, 2008.</p> <p>15</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 JONATHAN WONNELL</p> <p>20</p> <p>21 My Commission expires:</p> <p>22 November 21, 2011</p>

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EXHIBIT 24

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
 INDUSTRY AVERAGE WHOLESALE)
 PRICE LITIGATION) MDL No. 1456
 -----) Civil Action
 This document relates to:) No. 01-12257-PBS
 United States of America,)
 ex. rel. Ven-a-Care of the)
 Florida Keys, Inc.,) Hon. Patti Saris
 vs.)
 Abbott Laboratories, Inc.,) Magistrate Judge
 CIVIL ACTION NO. 06-11337-PBS) Marianne Bowler

Videotaped 30(b)(6) deposition of DAVID S. FISHMAN, called by the Plaintiffs for examination, taken pursuant to notice, agreement and by the provisions of the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before DEBORAH HABIAN, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter

Page 14	Page 16
<p>1 Q. I just wanted to make sure we were using</p> <p>2 the same terminology.</p> <p>3 A. Yes.</p> <p>4 Q. What about Alternate Site?</p> <p>5 A. I did a little bit of work with Alternate</p> <p>6 Site.</p> <p>7 Q. What work did you do with Alt Site?</p> <p>8 MS. CITERA: I'm just going to caution you to</p> <p>9 obviously not to reveal any privileged discussions.</p> <p>10 THE WITNESS: Okay.</p> <p>11 I served as legal counsel for Alter</p> <p>12 Site in the contracting arena.</p> <p>13</p> <p>14 BY MS. ST. PETER-GRIFFITH::</p> <p>15 Q. And when you say "in the contracting</p> <p>16 arena," what do you mean?</p> <p>17 A. Reviewing contracts. Providing legal</p> <p>18 advice with respect to contracts.</p> <p>19 Q. Did you provide any legal advice</p> <p>20 concerning compliance matters to HPD?</p> <p>21 A. Yes.</p> <p>22 Q. Okay, and what advice did you provide?</p>	<p>1 MS. ST. PETER-GRIFFITH: So you're instructing</p> <p>2 him not to answer?</p> <p>3 MS. CITERA: Yes.</p> <p>4 MS. ST. PETER-GRIFFITH: Okay. Well, we</p> <p>5 disagree with that instruction. I mean, obviously,</p> <p>6 you've proffered a lawyer as a 30(b)(6) rep. I'm</p> <p>7 entitled to inquire into this area, but you've given</p> <p>8 your instruction.</p> <p>9 MS. CITERA: I mean I just to want add he's</p> <p>10 here to testify about facts. He's not here to testify</p> <p>11 about any legal advice he gave. He's not here, you</p> <p>12 know -- any privileged conversations, that's not what</p> <p>13 he's here for. He's here to testify about, you know,</p> <p>14 subject to our limitations and objections, the topics</p> <p>15 that you've set forth.</p> <p>16</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. Sir, what did you -- oh, did you work with</p> <p>19 the Home Infusion Business Unit?</p> <p>20 A. Yes.</p> <p>21 Q. Okay, what work did you do with them?</p> <p>22 A. I provided training and legal advice</p>
Page 15	Page 17
<p>1 A. That would be privileged.</p> <p>2 MS. CITERA: I'm going to caution the witness</p> <p>3 that would be privileged.</p> <p>4 MS. ST. PETER-GRIFFITH: Okay, I just want to</p> <p>5 confirm, you're not asserting any advice of counsel</p> <p>6 defense in this case, right?</p> <p>7 MS. CITERA: I'm not going there, but what --</p> <p>8 MS. ST. PETER-GRIFFITH: Well, what --</p> <p>9 MS. CITERA: His -- I mean if you want to ask</p> <p>10 what type of compliance activities he did with or if</p> <p>11 he did any compliance activities with HPD or Alternate</p> <p>12 Site, that's fine, but what advice he gave, that would</p> <p>13 be privileged.</p> <p>14 MS. ST. PETER-GRIFFITH: What's the distinction</p> <p>15 between the two?</p> <p>16 MS. CITERA: Well, I mean one is his legal</p> <p>17 advice. The other is what -- you know, what types of,</p> <p>18 you know, training or things like that, that that's</p> <p>19 the distinction. What types of training he did versus</p> <p>20 what type of legal advice he may have gave to a -- to</p> <p>21 his client is not appropriate and is not, you know,</p> <p>22 what he's here to do.</p>	<p>1 regarding contract drafting and consulting on contract</p> <p>2 matters.</p> <p>3 Q. Do you remember which contracts you</p> <p>4 consulted on?</p> <p>5 A. No.</p> <p>6 Q. What training did you provide to Home</p> <p>7 Infusion?</p> <p>8 A. I provided a series of training on fraud</p> <p>9 and abuse -- the fraud and abuse laws and on antitrust</p> <p>10 laws and generally on the code of conduct, Code of</p> <p>11 Business Conduct.</p> <p>12 Q. Did you participate in the drafting of any</p> <p>13 materials concerning the Code of Business Conduct or</p> <p>14 fraud and abuse laws?</p> <p>15 MS. CITERA: Objection.</p> <p>16 THE WITNESS: That's two questions. I did not</p> <p>17 participate in the drafting of the Code of Business</p> <p>18 Conduct. I did participate in drafting language on</p> <p>19 fraud and abuse compliance matters.</p> <p>20</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. And is that true for Alt Site as well?</p>

5 (Pages 14 to 17)

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<p>1 A. They wouldn't have been --</p> <p>2 MS. CITERA: Objection to form.</p> <p>3 THE WITNESS: They wouldn't have been</p> <p>4 directed -- the types of things that I drafted</p> <p>5 wouldn't have been directed solely to Alternate Site</p> <p>6 other than a presentation I may have given.</p> <p>7</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. Okay, do you recall a presentation to Alt</p> <p>10 Site?</p> <p>11 A. Yes.</p> <p>12 Q. What presentations did you give to Alt</p> <p>13 Site?</p> <p>14 A. I gave them a presentation on fraud and</p> <p>15 abuse laws and antitrust laws generally.</p> <p>16 Q. And when was that?</p> <p>17 A. I don't recall.</p> <p>18 Q. Do you recall what decade it was?</p> <p>19 A. '90s.</p> <p>20 Q. Early '90s, late '90s?</p> <p>21 A. It would have been after 9 -- since I</p> <p>22 didn't support that business until after the fall of</p>	<p>1 Q. Okay. You didn't -- you don't recall any</p> <p>2 to the Alt Site group itself?</p> <p>3 MS. CITERA: Objection to form.</p> <p>4 THE WITNESS: I do not recall.</p> <p>5</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. What is your experience or what was the</p> <p>8 bases of your information for your pre -- the</p> <p>9 presentation that you gave on fraud and abuse and</p> <p>10 antitrust matters to the Home Infusion Business Unit?</p> <p>11 A. What was the basis?</p> <p>12 Q. Yes.</p> <p>13 MS. CITERA: Objection to form.</p> <p>14 THE WITNESS: The antikickback statutes and</p> <p>15 safe harbor regulations.</p> <p>16</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. Did you personally review those?</p> <p>19 A. Yes.</p> <p>20 Q. Did you -- what sources did you use for</p> <p>21 the presentation, just the stat -- the statutes</p> <p>22 themselves?</p>
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<p>1 '95, it would have been between the fall of '95 and</p> <p>2 when they stopped having a business.</p> <p>3 Q. Okay. Now, the training on fraud and</p> <p>4 abuse and antitrust, was that the same training that</p> <p>5 you gave to the Home Infusion Business Unit?</p> <p>6 MS. CITERA: Objection to form.</p> <p>7 THE WITNESS: That's -- I thought -- I'm</p> <p>8 confused by the question. I think that you asked that</p> <p>9 question already.</p> <p>10</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Sure. Did you -- let me break this down.</p> <p>13 You provided training to both Alt Site and Home</p> <p>14 Infusion, is that right, on fraud and abuse?</p> <p>15 A. No, Alt Site -- Home Infusion was part of</p> <p>16 Alt Site.</p> <p>17 Q. Okay.</p> <p>18 A. So and in that regarded, I'd say it</p> <p>19 limited to Home Infusion for presentations.</p> <p>20 Q. So you only gave presentations to Home</p> <p>21 Infusion?</p> <p>22 A. That I recall, yes.</p>	<p>1 MS. CITERA: Objection to the form.</p> <p>2 THE WITNESS: The presentations that we have --</p> <p>3 that are stacked in front of me now, I don't recall</p> <p>4 being an initial, original drafter of them. They are</p> <p>5 very similar in content. So the -- I think it was</p> <p>6 more of a template that existed.</p> <p>7 MS. ST. PETER-GRIFFITH: Okay, you say that</p> <p>8 that's in front of you. Why don't we mark the</p> <p>9 composite exhibit as Exhibit 1 that's in front of you.</p> <p>10 That way, the record is clear.</p> <p>11 THE REPORTER: Do you want the witness's name</p> <p>12 on it or just No. 1?</p> <p>13 MS. ST. PETER-GRIFFITH: Yeah, I think we</p> <p>14 need --</p> <p>15 MS. CITERA: Put the witness's name on.</p> <p>16 MS. ST. PETER-GRIFFITH: Yeah.</p> <p>17 THE REPORTER: Okay.</p> <p>18 (Exhibit Fishman 001, containing</p> <p>19 Sub Nos. 1 through 40 inclusive,</p> <p>20 was marked for ID)</p> <p>21</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>

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<p>1 Q. Where did you search?</p> <p>2 A. I searched my files.</p> <p>3 Q. Anyone else's files?</p> <p>4 A. I talked to people who were -- would have</p> <p>5 been at Abbott at that time, and nobody had any</p> <p>6 documents other -- other than what I had.</p> <p>7 Q. Do you know why Abbott didn't retain a</p> <p>8 copy of its Code of Business Conduct --</p> <p>9 MS. CITERA: Objection to the form.</p> <p>10</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. (Continuing) -- for this period from '91</p> <p>13 through '93?</p> <p>14 A. I -- I didn't know that they didn't retain</p> <p>15 it.</p> <p>16 Q. Okay, but your search for that document</p> <p>17 only involved going to the Office of Ethics and</p> <p>18 Compliance and going to several people within the</p> <p>19 Legal Department, right, Miss Goldberg and Miss</p> <p>20 Sensinoff?</p> <p>21 A. Szazdanoff.</p> <p>22 MS. CITERA: Szazdanoff.</p>	<p>1 MS. CITERA: Objection to the form.</p> <p>2 THE WITNESS: No.</p> <p>3</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. Did you provide any legal advice</p> <p>6 concerning price reporting during this time period?</p> <p>7 MS. CITERA: Objection to form. Also I'm</p> <p>8 obviously going to caution you to reveal any --</p> <p>9 THE WITNESS: Right. To the extent --</p> <p>10 MS. CITERA: -- any of your discussions that</p> <p>11 are privileged.</p> <p>12 THE WITNESS: To the extent I did or didn't</p> <p>13 would be covered by attorney-client privilege.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. You can answer "yes" or "no" though. I'm</p> <p>16 not asking you about communication --</p> <p>17 A. What's the question?</p> <p>18 MS. ST. PETER-GRIFFITH: Can you read the</p> <p>19 question back, please?</p> <p>20 THE REPORTER: Sure.</p> <p>21 (Record read.)</p> <p>22 MS. CITERA: You can answer "yes" or "no."</p>
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<p>1 MS. ST. PETER-GRIFFITH: Szazdanoff.</p> <p>2 THE WITNESS: That is --</p> <p>3 MS. CITERA: Objection to form.</p> <p>4 THE WITNESS: That is correct.</p> <p>5</p> <p>6 BY MS. ST. PETER-GRIFFITH::</p> <p>7 Q. Okay, going back, what other</p> <p>8 responsibilities did you have for the time period of</p> <p>9 the fall of '95 through to 2004?</p> <p>10 A. As Commercial Attorney for each of those</p> <p>11 divisions, all the Commercial Attorneys were</p> <p>12 responsible for providing commercial legal services to</p> <p>13 those businesses, which ranged from drafting</p> <p>14 contracts, discussing issues that arose, legal matters</p> <p>15 that arose, strategic business matters that arose,</p> <p>16 buying companies, drafting licenses, distribution</p> <p>17 agreements, whatever -- again, the Commercial demands</p> <p>18 of the businesses was -- it was providing support for</p> <p>19 those divisions for the U.S. operations.</p> <p>20 Q. Did your responsibilities entail anything</p> <p>21 pertaining to price reporting or Abbott's relationship</p> <p>22 with the price reporting compendia?</p>	<p>1 THE WITNESS: Yes.</p> <p>2</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. What advice did you give?</p> <p>5 MS. CITERA: Objection, privileged.</p> <p>6 THE WITNESS: That's -- any advice I would have</p> <p>7 given would be covered by --</p> <p>8 MS. ST. PETER-GRIFFITH:: Toni, do you intend</p> <p>9 to -- does Abbott intend to rely upon an advice of</p> <p>10 counsel defense?</p> <p>11 MS. CITERA: I'm not going there. You ask this</p> <p>12 question every deposition.</p> <p>13 MS. ST. PETER-GRIFFITH: Yes, I did because I</p> <p>14 want your -- you to answer.</p> <p>15 MS. CITERA: I'm not making any stipulations or</p> <p>16 statements. You're here to ask questions of the</p> <p>17 witness. You're not here to ask questions of me.</p> <p>18 This -- your question is clearly privileged. He's not</p> <p>19 going to answer it.</p> <p>20</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. What other responsibilities did you have</p>

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<p>1 Abbott?</p> <p>2 A. No, I consulted with the law firms that I</p> <p>3 mentioned.</p> <p>4 Q. Okay, did you consult with them concerning</p> <p>5 compliance with Medicare and Medicaid fraud and abuse?</p> <p>6 MS. CITERA: Objection to the form. Also</p> <p>7 obviously don't reveal any of the subject matter of</p> <p>8 your conversations.</p> <p>9 THE WITNESS: I believe I answered -- I believe</p> <p>10 that's the answer to the previous question, which law</p> <p>11 firms did I consult on the subject matters. So, yes,</p> <p>12 I did consult with them.</p> <p>13</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Okay, what else did you do in assisting</p> <p>16 HPD with its Medicare and Medicaid fraud and abuse</p> <p>17 compliance?</p> <p>18 A. We provided regular training and made</p> <p>19 ourselves available for them to contact whenever there</p> <p>20 was any questions or concerns they had.</p> <p>21 Q. Were you the only one providing assistance</p> <p>22 to HPD concerning Medicare or Medicaid fraud and abuse</p>	<p>1 different.</p> <p>2 Q. Well, did -- you weren't working with HPD,</p> <p>3 right?</p> <p>4 A. Well, HPD didn't exist, so no.</p> <p>5 Q. Okay, you weren't working with AHD?</p> <p>6 A. AHD didn't exist, but I was working with</p> <p>7 the businesses that the -- the medical products -- the</p> <p>8 Medical Products Group.</p> <p>9 Q. Okay.</p> <p>10 A. I supported the Medical Products Group.</p> <p>11 Q. Okay, did you work at all with PPD?</p> <p>12 A. Not until August of 2 -- August of 2006.</p> <p>13 Q. Okay, what were your job responsibilities</p> <p>14 working with the Medical Products Group from '04 to</p> <p>15 '06?</p> <p>16 A. Provide broad commercial legal services to</p> <p>17 the businesses that were part of the Medical Products</p> <p>18 Group.</p> <p>19 Q. Anything else?</p> <p>20 A. I was in a supervisory role, so managing</p> <p>21 people.</p> <p>22 Q. And after August of 2006?</p>
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<p>1 compliance for this '95 through 2004 time frame?</p> <p>2 A. No.</p> <p>3 Q. Who else was?</p> <p>4 A. About 80% of the names I mentioned</p> <p>5 previously. You want a list of all the names that I</p> <p>6 can recall?</p> <p>7 Q. Um-hum.</p> <p>8 A. Honey Lynn Goldberg, Jim Albrecht, Mark</p> <p>9 Habeberger, Priscilla Porembski -- this was '94</p> <p>10 to 2000 -- '95 to 2004?</p> <p>11 Q. Yes.</p> <p>12 A. (Continuing) -- Lisa Edmonds, the new name</p> <p>13 I had mentioned previously, Lynn Boehringer, Kate</p> <p>14 Collins, Peter Petros, and one other name I forgotten</p> <p>15 Ngozi, N-g-o-z-i, Watts, Salina Thomas, Simi Chabria.</p> <p>16 That's -- she may have been after 2004. I don't know.</p> <p>17 I don't remember.</p> <p>18 Q. Let's round this out. After 2004, what</p> <p>19 were your job responsibilities?</p> <p>20 A. My job responsibilities from 2004</p> <p>21 through -- through August of 2006 remained the same,</p> <p>22 although the -- again, the company structure was</p>	<p>1 A. I became the sole client in -- on the</p> <p>2 pharma side was the Business Development Group. So I</p> <p>3 did transactions for pharma.</p> <p>4 Q. Can you explain that?</p> <p>5 A. I did transactional work -- as opposed to</p> <p>6 providing day-to-day legal services for an ongoing</p> <p>7 business, I did transactional work. M & A were -- was</p> <p>8 lead attorney in the acquisition of Coast</p> <p>9 Pharmaceuticals. I did strategic alliance</p> <p>10 arrangements, licensing deals, larger transactions</p> <p>11 that came out of our Business Development Group on the</p> <p>12 pharma side.</p> <p>13 Q. Okay, and when you say "pharma," you don't</p> <p>14 mean the -- you mean -- that's just a term within</p> <p>15 Abbott. You're not referencing the -- the lobbying --</p> <p>16 A. Oh, no, no, I'm sorry.</p> <p>17 Q. Okay.</p> <p>18 A. It's -- the pharmaceutical products, P --</p> <p>19 our Pharmaceutical Products Group.</p> <p>20 Q. Okay, I just wanted to clarify that.</p> <p>21 A. Yeah, different shades in the Medical</p> <p>22 Products side.</p>

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<p>1 Q. Oh, I'm sorry. No. If that's -- okay, 2 for AWP, that's what he told you? 3 A. That's what he told me about AWP. 4 Q. Okay. And in terms of the OEC policy, if 5 you could pull out Tab 38 of Exhibit 1? 6 A. (Witness so doing). 7 MS. CITERA: Do you have a copy? Oh, yeah, I'm 8 sorry. 9 MS. ST. PETER-GRIFFITH: It's right in front of 10 you, Toni. I tried to give it to you in advance. 11 MS. CITERA: But the numbers don't correspond 12 or they do correspond? 13 MS. ST. PETER-GRIFFITH: They do, they do. The 14 numbers at the bottom do correspond. 15 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Sir, is that the policy that you're 18 referencing? 19 A. No. 20 Q. Okay, what -- 21 A. This is a procedure. 22 Q. Okay, what OEC policy are you talking</p>	<p>1 MS. CITERA: Yeah. 2 MS. ST. PETER-GRIFFITH: And I have to tell 3 you, Toni, that I certainly would have remembered it 4 if Shelly Brock's name was on it. 5 THE WITNESS: Charlie. 6 MS. CITERA: Charlie Brock. 7 MS. ST. PETER-GRIFFITH: Oh, Charlie. I was 8 going to say that Shelly Brock was a name that I'd 9 never heard of before. 10 THE WITNESS: I don't even think he has a 11 relative by that name. These look like all 12 presentations. 13 MS. ST. PETER-GRIFFITH: Yeah, the earlier ones 14 are presentations. 15 MS. CITERA: No, I looked through it. I didn't 16 see it. 17 THE WITNESS: Oh, you saw it, okay. 18 19 BY MS. ST. PETER-GRIFFITH: 20 Q. Okay, well, we'll go back to that. 21 A. Okay. 22 Q. Other than AWP, what additional matters</p>
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<p>1 about? 2 A. There was a corporate -- the corporate 3 policies and then division procedures, the corporate 4 policy on reimbursement information. 5 Q. Is that in that stack right there? 6 A. I don't know. 7 Q. Is -- was it part of this production that 8 was made to me on the 7th, do you know? 9 A. I don't know what was pro -- I don't know 10 what was produced. 11 Q. What did the document look like? 12 A. Similar to this, smaller print, smaller 13 font. It is a policy, it had Charlie Brock's name on 14 the bottom, different dates. It would have -- 15 MS. CITERA: And I'll just interject. This 16 would have been produced to you previously. 17 MS. ST. PETER-GRIFFITH: I don't think it was. 18 I've gotten every document, and I haven't seen that 19 document. 20 MS. CITERA: And I swear I saw a Bates number 21 on it. I'll -- 22 MS. ST. PETER-GRIFFITH: If you could check?</p>	<p>1 did you discuss with Mr. Sellers? 2 A. We talked about the compliance activities 3 in that time frame that were relevant -- that were 4 provided to -- to the division, and while I was 5 busy -- I was participating in providing a lot of that 6 training activity or would have been one of the 7 attorneys providing that training activity, it was 8 refreshing my recollection and confirming my 9 understandings. 10 Q. What did he tell you that refreshed your 11 recollection and confirmed your understanding? 12 A. That we gave presentations to various 13 internal client groups within Abbott, specifically 14 HPD, on fraud and abuse. 15 Q. To various client groups, did you say? 16 A. Internal client, my clients. As an Abbott 17 attorney, it would be my clients. 18 Q. Okay, not not Abbott clients? 19 A. Not Abbott customers. 20 Q. Customers, okay. 21 A. Clients as an attorney. Mike was my 22 client.</p>

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<p>1 Q. Okay, and presen -- what else did Mike 2 Sellers tell you?</p> <p>3 A. I'm having difficulty differentiating what 4 he told me versus what I knew. The purpose of the 5 call was to talk about the compliance activities in 6 HPD in the relevant time frames. So it would have 7 been -- as a broad matter, it would have been that. 8 So it was fraud and abuse, the guidelines, the 9 operating guidelines, the policy, procedures. We 10 talked about the handbook that followed the 11 guidelines.</p> <p>12 Q. Is that the Handbook For Business 13 Executives?</p> <p>14 A. That's the Fraud and Abuse Handbook. I 15 don't remember the exact -- that's the -- that might 16 be the business -- the proper name, but it was the 17 Fraud and Abuse Handbook from 2000 -- 2000.</p> <p>18 Q. From 2000?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Well, we'll go over it later. What 21 else -- what policies did you discuss with 22 Mr. Sellers?</p>	<p>1 Q. Okay, anything else that you can recall 2 that -- other than the personal conversations that 3 educated in preparation for today's deposition?</p> <p>4 A. Not that I can recall.</p> <p>5 Q. Okay, what about your conversations with 6 Ms. Tobiason? First, did you speak with her in 7 person?</p> <p>8 A. No, it was by phone.</p> <p>9 Q. How long was your phone call?</p> <p>10 A. They were scheduled an hour, and I 11 don't -- again, I would say a half hour to an hour. I 12 don't recall any of the -- you know, for all of those, 13 they were all scheduled an hour, and I don't know that 14 we took the full hour for any of them. We may have.</p> <p>15 Q. And what did you discuss with Miss 16 Tobiason?</p> <p>17 A. We talked about -- she described -- again, 18 generally she educated -- reeducated me on Medicare 19 pricing -- Medicare/Medicaid pricing arrangements, HIP 20 codes, DRGs, et cetera.</p> <p>21 Q. Did you say HIP codes?</p> <p>22 A. (Witness nodding). I think there's -- HPT</p>
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<p>1 A. We talked about the reimbursement poli -- 2 corporate policy and the HPD procedure on 3 reimbursement.</p> <p>4 Q. Anything else?</p> <p>5 A. Not that I can recall.</p> <p>6 Q. Okay, is there anything else -- how long 7 did your conversation with Mr. Sellers last?</p> <p>8 A. Between thirty minutes and an -- and an 9 hour.</p> <p>10 Q. Is there anything else that you recall him 11 telling you?</p> <p>12 A. Retirement wasn't that fun.</p> <p>13 Q. Toni keeps him busy?</p> <p>14 MS. CITERA: Tina.</p> <p>15 MS. ST. PETER-GRIFFITH: Or Tina, okay.</p> <p>16 MS. CITERA: Or really you guys.</p> <p>17 THE WITNESS: I mean we had personal -- I 18 hadn't -- he had moved to Hospira in 2004. I hadn't 19 seen him since, so -- I worked with him a long time, 20 so we also spent time just chatting.</p> <p>21</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>	<p>1 codes?</p> <p>2 MS. CITERA: I think he means HICPICs.</p> <p>3 MS. ST. PETER-GRIFFITH: HICPICs, okay.</p> <p>4 THE WITNESS: HICPICs? Some -- okay, yeah, 5 I'm --</p> <p>6</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. DRGs, okay.</p> <p>9 A. So we talked about just the regulatory 10 environment around reimbursement.</p> <p>11 Q. What about the regulatory environment 12 around -- around -- around reimbursement?</p> <p>13 A. Just she would have mentioned -- she would 14 have described the structure of it, like you said, 15 with HIP codes --</p> <p>16 Q. HICPICs?</p> <p>17 A. HICPICs, sorry. (Continuing) -- DRGs, 18 billing codes. We talked about AMP and best pricing. 19 We talked about her recollections of -- which were 20 similar to Mike's on the practice of -- of hand -- of 21 how AWP was handled within the division.</p> <p>22 Q. Okay, what did she tell you about how AWP</p>

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<p>1 was handled within the division?</p> <p>2 A. Her recollection was that AWP was not</p> <p>3 something that they talked to customers about.</p> <p>4 Q. Okay, anything else?</p> <p>5 A. Talked about the process for her</p> <p>6 involvement in formulating the -- ultimately the OEC</p> <p>7 policies and procedures in 2003, in -- in 2004 and</p> <p>8 beyond.</p> <p>9 Q. And what policies did she formulate?</p> <p>10 A. She was involved in -- in the</p> <p>11 reimbursement information and support policy and</p> <p>12 procedure.</p> <p>13 Q. Okay, what did she tell you about that?</p> <p>14 A. Just that she -- she was involved in</p> <p>15 reviewing and pre -- reviewing and revising as</p> <p>16 appropriate, to -- to reflect their understanding of</p> <p>17 the policy.</p> <p>18 Q. To reflect whose understanding of the</p> <p>19 policy?</p> <p>20 A. Well, hers would have been her</p> <p>21 understanding of it. I mean she was one -- she was --</p> <p>22 there was input -- she was one input. So it would</p>	<p>1 A. I don't know what -- I don't -- she -- she</p> <p>2 left HPD at some point in time and became part of OEC.</p> <p>3 So I don't -- I don't know what time frame she would</p> <p>4 have been referring to.</p> <p>5 Q. You don't know whether it was her OEC</p> <p>6 experience or her HPD experience?</p> <p>7 A. I don't know that -- how easily those are</p> <p>8 differentiated.</p> <p>9 Q. So you don't know when she was talking</p> <p>10 about AMP and best pricing whether she was talking</p> <p>11 about, for example -- well, when was OEC created?</p> <p>12 A. OEC? Charlie was appointed Chief</p> <p>13 Compliance Officer late 2000.</p> <p>14 Q. In late 2000? Okay. Do you recall</p> <p>15 whether or not she was involved with OEC then?</p> <p>16 A. Initially, she was -- she advised -- she</p> <p>17 advised me that she was not.</p> <p>18 Q. She was not, okay. So in --</p> <p>19 A. But she also -- she was not with HP -- she</p> <p>20 had moved over to ADD at some point as well.</p> <p>21 Q. Okay, so the information that she gave you</p> <p>22 concerning AMP and best pricing, you don't know if it</p>
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<p>1 have been hers.</p> <p>2 Q. Okay, anybody else that participated in</p> <p>3 the drafting of that reimbursement policy?</p> <p>4 A. I don't know.</p> <p>5 Q. Did she mention anybody else?</p> <p>6 A. I know in the drafting -- in the</p> <p>7 implementation -- in the formulation of it, Cliff</p> <p>8 Berman would have been involved, Katherine Szazdanoff</p> <p>9 would have been involved.</p> <p>10 Q. Okay, anything else?</p> <p>11 A. I don't think so.</p> <p>12 Q. Other than the OEC policy, was there</p> <p>13 anything else that she discussed with you?</p> <p>14 A. Other than what I've mentioned, no.</p> <p>15 Q. Okay, what did she tell you about AMP and</p> <p>16 best pricing?</p> <p>17 A. She would just have described how Abbott</p> <p>18 would be responsible for providing AMP and best</p> <p>19 pricing information in periodic reports that it had to</p> <p>20 submit to the government.</p> <p>21 Q. During what period of time was that</p> <p>22 referencing?</p>	<p>1 was, say, post 2002 when she joined OEC or if she was</p> <p>2 referencing her HPD experience?</p> <p>3 A. The information she provided was not --</p> <p>4 was not year specific. It was general information</p> <p>5 about the process.</p> <p>6 Q. What about concerning HICPICs codes, DRGs</p> <p>7 and the structure of the Medicare and Medicaid pricing</p> <p>8 arrangements?</p> <p>9 A. It was a summary of that arrangement -- of</p> <p>10 those arrangements. It was not -- it would not have</p> <p>11 been, In 1995, XY and Z, 1996 only X and Y. It was</p> <p>12 only a general summary of those pricing structures --</p> <p>13 Q. Do you --</p> <p>14 A. -- or coding structures.</p> <p>15 Q. Okay. Did she -- well, what else do you</p> <p>16 recall about the summaries that she provided?</p> <p>17 A. That -- in DRGs, that the vast</p> <p>18 predominance of HPD's business were tied to DRGs</p> <p>19 because it was -- it was a hospital</p> <p>20 institutional-based sales customer base.</p> <p>21 Q. Okay, what else did she tell you?</p> <p>22 A. That's all that I can recall.</p>

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<p>1 evaluate whether or not the Home Infusion consignment 2 arrangements and revenue share contracts were in 3 compliance with federal and state Medicare and 4 Medicaid fraud and abuse statutes and regulations? 5 MS. CITERA: Objection, asked and answered. 6 THE WITNESS: Abbott would have -- Abbott, the 7 Legal Department, obtained, reviewed, read statutes 8 directly and regulations and would have consulted with 9 outside counsel on a case-by-case basis. We would 10 have educated ourselves through periodicals and other 11 advisory documents that would have been presented from 12 external sources. 13 MS. ST. PETER-GRIFFITH: Okay, we will pick up 14 on this after the break, but there's five minutes left 15 on the tape. 16 MS. CITERA: Okay. 17 MS. ST. PETER-GRIFFITH: So why don't we take a 18 break. 19 THE VIDEOGRAPHER: Going off the record at 1:19 20 a.m. -- 11:19 a.m. 21 (Recess taken.) 22 THE VIDEOGRAPHER: Beginning of Videotape No. 3</p>	<p>1 the same question, but the business unit would not 2 have -- should not have made -- reached legal 3 conclusions about any of its practices. 4 As a general rule, again, Abbott had 5 business -- a Code of Business Conduct. All Abbott 6 employees were obligated to adhere and comply with all 7 laws including federal healthcare laws, so they had an 8 overriding standard to adhere to. 9 What they would have done to ensure 10 compliance, is that the question? 11 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Yes. 14 A. As managers, managers had responsibility 15 to supervise its employees. So they would have been 16 working with employees, making sure they adhered -- 17 they adhered to -- to the laws. 18 Q. Okay, but my question is particular to the 19 Home Infusion Business Unit model of consignment 20 arrangements. 21 A. Yes, my answer would have to be I'm not 22 aware of -- what I described would be applicable to</p>
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<p>1 in the deposition of Mr. Fishman. We're back on the 2 record at 11:30 a.m. 3 4 BY MS. ST. PETER-GRIFFITH: 5 Q. Mr. Fishman, I'm going to get back on task 6 here a little bit. I've got a couple of follow-up 7 questions though. 8 Prior to the break, we were 9 discussing what Abbott did to confirm that its Home 10 Infusion Business Unit basically business model of 11 consignment or risk sharing agreements complied with 12 state and federal Medicare and Medicaid laws. 13 Other than work done within the Legal 14 Department, did Abbott's Home Infusion Business Unit 15 do anything else to verify whether or not its Home 16 Infusion business model of consignment arrangements or 17 risk share contracts complied with or violated state 18 and federal Medicare/Medicaid fraud and abuse 19 statutes? 20 MS. CITERA: Objection to the form. 21 THE WITNESS: I'm not sure that was the same 22 question you asked before, but -- or a follow-up to</p>	<p>1 all business units. 2 Q. Okay. 3 A. And I'm not aware that the Home 4 Business -- Home Infusion would have done anything 5 over and above that. 6 Q. Okay, so ultimately then, the -- the 7 compliance check, if you will, on whether or not this 8 particular business model was in compliance with 9 federal and state Medicare/Medicaid fraud and abuse 10 statutes, that would rest with the in-house counsel? 11 MS. CITERA: Objection to form. 12 THE WITNESS: The determination of compliance, 13 the legal evaluation of facts as applied against 14 regulations and laws would have been a legal 15 determination. Again, once the legal determination, 16 when given and communicated to the business, 17 compliance with that determination would be everyone's 18 obligation. 19 20 BY MS. ST. PETER-GRIFFITH: 21 Q. Okay. But in terms of doing that initial 22 evaluation, that would be done within the Legal Unit?</p>

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<p>1 A. It should have been.</p> <p>2 Q. Okay. And is that -- that's true for all</p> <p>3 of HPD?</p> <p>4 A. That's true for all of Abbott.</p> <p>5 Q. Okay. Another clean-up matter that I want</p> <p>6 to get to --</p> <p>7 A. Okay.</p> <p>8 Q. -- is, sir, you referred earlier to an OEC</p> <p>9 policy with Charles Brock's name on it. I'd like to</p> <p>10 mark this as Exhibit 2 and ask you, sir, if this is</p> <p>11 the policy you were talking about?</p> <p>12 MS. CITERA: Do you have my copy? I mean --</p> <p>13 oh, I gave you four copies, right.</p> <p>14 MS. ST. PETER-GRIFFITH: Here you go.</p> <p>15 MS. CITERA: Thank you.</p> <p>16 THE WITNESS: This is the policy I was</p> <p>17 referring to, yes.</p> <p>18 MS. ST. PETER-GRIFFITH: Okay, can we mark that</p> <p>19 as Exhibit 2?</p> <p>20 THE WITNESS: Yeah.</p> <p>21 MS. ST. PETER-GRIFFITH: Could you just give</p> <p>22 that to --</p>	<p>1 in tandem from the Legal organization to issue the</p> <p>2 operating guidelines, that each division had its own.</p> <p>3 We were working to maintain consistency and</p> <p>4 uniformity, where appropriate. And he was supporting</p> <p>5 Ross. I was tasked with supporting and -- Lynn</p> <p>6 Boehringer and I were tasked with supporting HPD. So</p> <p>7 we worked -- we talked about having worked together to</p> <p>8 do -- to issue those guidelines back in '99.</p> <p>9 Q. Okay, in '99?</p> <p>10 A. Correct, August.</p> <p>11 Q. And did -- what specifically did Mr.</p> <p>12 Taylor discuss with you about that?</p> <p>13 A. Mostly confirming it, and we joked how we</p> <p>14 had a deadline and we were up 'til 3 in the morning</p> <p>15 finishing it.</p> <p>16 Q. I see. Anything else about that you can</p> <p>17 recall of your conversation with Mr. Taylor?</p> <p>18 A. No.</p> <p>19 Q. What con -- what conversation did you</p> <p>20 have -- is it Miss Pence-Leav, Miss Pence-Levy?</p> <p>21 A. Miss -- Ms. Pence-Levy, P-E-N-C-E -</p> <p>22 L-E-V-Y, Melissa.</p>
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<p>1 THE WITNESS: Oh, I'm sorry. (Tendering</p> <p>2 document).</p> <p>3 (Exhibit Fishman 002 was</p> <p>4 marked for ID)</p> <p>5</p> <p>6 BY MS. ST. PETER-GRIFFITH::</p> <p>7 Q. Okay, sir, going back to your</p> <p>8 communications with Mr. Taylor, did you have any other</p> <p>9 communications with Mr. Taylor?</p> <p>10 A. Can you re --</p> <p>11 Q. Sure.</p> <p>12 A. -- restate what you have so far that I've</p> <p>13 said I said?</p> <p>14 Q. Sure. You discussed two things with</p> <p>15 Mr. Taylor, the communications with Mr. Fischer and</p> <p>16 Mr. Tootell --</p> <p>17 A. Right.</p> <p>18 Q. -- and the operations or commercial advice</p> <p>19 for the H -- for HPD when he held the position before</p> <p>20 you did from '91 through '95?</p> <p>21 A. Right. And then I would add a third</p> <p>22 thing, which was the operating guidelines. We worked</p>	<p>1 Q. Okay, and what did you --</p> <p>2 A. You can tell I've dictated documents</p> <p>3 before.</p> <p>4 Q. What do you recall about your conversation</p> <p>5 with Ms. Pence-Levy?</p> <p>6 A. My conversation with Ms. Pence-Levy</p> <p>7 pertained to the questions -- the issues that Mike</p> <p>8 Tootell apparently raised in deposition testimony</p> <p>9 regarding concerns, specific concerns he had about</p> <p>10 AWP.</p> <p>11 Q. And what did you dis -- what did Miss</p> <p>12 Pence-Levy discuss with you about that?</p> <p>13 A. She reminded me that she came onboard in</p> <p>14 May time frame of 2003.</p> <p>15 Q. Oh.</p> <p>16 A. So any conversations that would have been</p> <p>17 prior to that, she can't talk to at all, but she had</p> <p>18 no recollection of Mike coming to her regarding that</p> <p>19 subject -- regarding AWP subject matter in any</p> <p>20 concerned way.</p> <p>21 Q. Do you recall any -- did you discuss</p> <p>22 anything else with Miss Pence-Levy?</p>

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<p>1 less, but I don't have to document them.</p> <p>2 MS. ST. PETER-GRIFFITH: Oh, I -- I don't doubt</p> <p>3 that.</p> <p>4</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. Sir, did Abbott -- for purposes of</p> <p>7 evaluating its HPD Medicaid/Medicare fraud and abuse</p> <p>8 compliance obligations, did Abbott ever consider</p> <p>9 whether it's pricing and its decision to report prices</p> <p>10 that created spreads of fifty, a hundred, a thousand</p> <p>11 percent or more implicated Medicaid or Medicare fraud</p> <p>12 and abuse?</p> <p>13 MS. CITERA: Objection to the form.</p> <p>14 THE WITNESS: In the presen -- in the training</p> <p>15 environment that I op -- that I operated in and other</p> <p>16 Commercial Attorneys operated in, AWP and pricing was</p> <p>17 not something that we addressed.</p> <p>18 Again, back to -- I think I said</p> <p>19 earlier, to the extent questions may have come in to</p> <p>20 me about AWP, we would have referred them to</p> <p>21 Litigation.</p> <p>22</p>	<p>1 Q. Who would undertake that evaluation on</p> <p>2 behalf of Abbott?</p> <p>3 A. The Legal Department.</p> <p>4 Q. Anyone else?</p> <p>5 A. They -- no one else should.</p> <p>6 Q. Did Abbott's Legal Department ever</p> <p>7 undertake that evaluation?</p> <p>8 MS. CITERA: Objection to form, also objection</p> <p>9 to the extent it seeks privileged communications,</p> <p>10 outside the scope.</p> <p>11 THE WITNESS: To my knowledge -- to my</p> <p>12 knowledge, the Commercial -- the Commercial lawyers</p> <p>13 did not. I don't know whether the Litigation</p> <p>14 attorneys did.</p> <p>15</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. Who would know that?</p> <p>18 A. Whoever was the head of Litigation.</p> <p>19 Q. Did you do anything to ascertain what</p> <p>20 steps may have been taken to confirm Abbott's pricing</p> <p>21 practice -- that confirmed that Abbott's pricing</p> <p>22 practices were in conformity with Medicare and</p>
Page 287	Page 289
<p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Did Litigation give any presentations</p> <p>3 concerning pricing or AWP?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. Why not?</p> <p>6 A. I mean I can't answer why they didn't.</p> <p>7 Q. Did anyone within Abbott ever evaluate</p> <p>8 whether or not its maintenance of spreads between what</p> <p>9 it was actually selling to customers and its AWP's were</p> <p>10 violative of Medicare or Medicaid fraud and abuse</p> <p>11 laws?</p> <p>12 MS. CITERA: Objection to the form, outside the</p> <p>13 scope.</p> <p>14 THE WITNESS: Any analysis that would or</p> <p>15 wouldn't have occurred would be a legal privilege.</p> <p>16 MS. CITERA: Also privileged.</p> <p>17</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Why would it be a legal privilege? I'm</p> <p>20 asking whether Abbott ever undertook that evaluation.</p> <p>21 A. I don't know whether they undertook that</p> <p>22 evaluation.</p>	<p>1 Medicaid fraud and abuse statutes within the</p> <p>2 Litigation Department?</p> <p>3 MS. CITERA: Objection to form.</p> <p>4 THE WITNESS: I did not have a conversation</p> <p>5 with Litigation.</p> <p>6</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. In 2001, did Abbott reduce its list prices</p> <p>9 on certain HPD products for any reason pertaining to</p> <p>10 Medicare or Medicaid fraud and abuse laws?</p> <p>11 MS. CITERA: Objection to the form, outside the</p> <p>12 scope.</p> <p>13 THE WITNESS: Not to my knowledge.</p> <p>14</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Okay, sir, we left off with you learned</p> <p>17 laws through -- is there anything else -- other than</p> <p>18 the presentations that you've described when you said</p> <p>19 that we do not have all of them in front of us --</p> <p>20 A. I have to assume that these are not all of</p> <p>21 them because most -- many of the -- I don't know if</p> <p>22 things dated -- things that were given in 1994 would</p>

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<p>1 information to Abbott's -- no, to -- or to the</p> <p>2 reporting compendia by Abbott.</p> <p>3 MS. CITERA: I'm just going to object to the</p> <p>4 characterization as "false list prices."</p> <p>5 THE WITNESS: To my understanding, Abbott --</p> <p>6 the third party created the spread.</p> <p>7</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. But they created the spread based upon</p> <p>10 information provided to them by Abbott, right?</p> <p>11 MS. CITERA: Objection to the form, outside the</p> <p>12 scope.</p> <p>13 THE WITNESS: To my understanding, we would</p> <p>14 have provided information to the compendia.</p> <p>15</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. Okay. And what did Abbott do to ensure</p> <p>18 that the information provided to the compendia did not</p> <p>19 violate the Federal False Claims Act or Medicaid and</p> <p>20 Medicare fraud and abuse statutes?</p> <p>21 A. To the extent --</p> <p>22 MS. CITERA: Object, to the form.</p>	<p>1 pricing and price reporting didn't violate federal or</p> <p>2 state Medicare or Medicaid fraud and abuse laws?</p> <p>3 A. They should not have gone to any source</p> <p>4 other than Legal.</p> <p>5 Q. Okay, did they go to Legal with questions</p> <p>6 concerning pricing and Medicare or Medicaid fraud and</p> <p>7 abuse statutes?</p> <p>8 MS. CITERA: Objection to the form, outside the</p> <p>9 scope. I also caution you not to reveal any</p> <p>10 privileged discussions.</p> <p>11 THE WITNESS: Did they come -- again, the</p> <p>12 breadth of the question, Did they come to Legal to</p> <p>13 talk about Medicare or Medicaid pricing questions,</p> <p>14 yes.</p> <p>15</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. Okay, who came to Legal and discussed it?</p> <p>18 MS. CITERA: Same objections, same instruction.</p> <p>19 THE WITNESS: I don't -- I don't -- I don't</p> <p>20 know specific names. It would have been part of --</p> <p>21 anytime that people working within HPD had a question</p> <p>22 that they felt raised legal questions in their mind or</p>
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<p>1 THE WITNESS: To the extent those laws</p> <p>2 specifically defined those terms and addressed what</p> <p>3 was expected of participants operating under the</p> <p>4 statute, they would have complied with the law.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. How do you know that?</p> <p>7 A. Because they're instructed to comply with</p> <p>8 the law.</p> <p>9 Q. What instructions were they given?</p> <p>10 MS. CITERA: Objection to the form.</p> <p>11 THE WITNESS: I don't have a specific</p> <p>12 instruction.</p> <p>13</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Okay. Because you testified earlier that</p> <p>16 there was no training on pricing and AWP --</p> <p>17 A. Legal training.</p> <p>18 Q. No legal training?</p> <p>19 A. (Witness nodding).</p> <p>20 Q. Okay. Was there another resource that HPD</p> <p>21 employees had available to them to -- that they could</p> <p>22 go to to ensure that their practices concerning</p>	<p>1 were uncertain as to what the legal call was as to how</p> <p>2 you did something, they would have called Legal. It</p> <p>3 would have been part of everyday, and whether there</p> <p>4 was a call everyday on pricing, the answer is no. Was</p> <p>5 there -- well, again, you're describing a time frame</p> <p>6 '91 to 2002 or 2001. The Legal Department served as</p> <p>7 the legal advisor to the division and would have</p> <p>8 answered questions on a periodic basis.</p> <p>9</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. At any time did anyone within the Hospital</p> <p>12 Products Division raise a question with Abbott Legal</p> <p>13 Division about its pricing conduct and the compliance</p> <p>14 of its pricing conduct with Medicare and Medicaid</p> <p>15 fraud and abuse statutes?</p> <p>16 MS. CITERA: Same objections and instructions.</p> <p>17 THE WITNESS: Not to my knowledge. I can't</p> <p>18 speak to what Litigation might have known.</p> <p>19</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. What did you do to investigate whether or</p> <p>22 not any such inquiry was made?</p>

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<p>1 MS. CITERA: Objection to the form.</p> <p>2 THE WITNESS: All people were required to</p> <p>3 follow Medicare and Medicaid fraud and abuse laws.</p> <p>4</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. And that's true for those individuals that</p> <p>7 worked with Abbott's AWP's?</p> <p>8 A. That would be --</p> <p>9 MS. CITERA: Objection to form.</p> <p>10 THE WITNESS: That would be true of all</p> <p>11 employees.</p> <p>12</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Okay. And from any time including from</p> <p>15 1991 to the 2000?</p> <p>16 MS. CITERA: Objection to form.</p> <p>17 THE WITNESS: It would be as long as the law</p> <p>18 was in effect, which even predated '91, but yes.</p> <p>19</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Okay. If that's the case, how did Abbott</p> <p>22 as a matter of policy permit its list or catalog</p>	<p>1 A. I --</p> <p>2 MS. CITERA: Objection to form, outside the</p> <p>3 scope to the extent you're asking him to give a legal</p> <p>4 opinion.</p> <p>5 THE WITNESS: I believe when you talk about</p> <p>6 whether a particular activity is implicated by a</p> <p>7 statute, you're asking me to reach a legal conclusion.</p> <p>8</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. Well, did Abbott consider Medicaid and</p> <p>11 Medicare compliance in its decision making concerning</p> <p>12 the business practice of setting its annual catalog</p> <p>13 and list prices and decreasing its market product</p> <p>14 prices?</p> <p>15 MS. CITERA: Same objections.</p> <p>16 THE WITNESS: Abbott considered compliance with</p> <p>17 all laws in -- in each of its activities that it would</p> <p>18 have conducted.</p> <p>19</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Okay, what did it do to evaluate</p> <p>22 compliance with Medicaid and Medicare laws in the</p>
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<p>1 prices to receive annual price increases on drugs when</p> <p>2 the market prices decreased?</p> <p>3 MS. CITERA: Objection to the form, outside the</p> <p>4 scope.</p> <p>5 MS. ST. PETER-GRIFFITH: It's not outside the</p> <p>6 scope.</p> <p>7 THE WITNESS: That's -- that would be a</p> <p>8 business decision, and I couldn't address pricing that</p> <p>9 I'm aware of was tied to CPI.</p> <p>10</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Okay, pricing -- what pricing?</p> <p>13 A. Pricing generally.</p> <p>14 Q. List pricing, catalog pricing?</p> <p>15 A. Well, price -- the business practice was</p> <p>16 looking at pricing and considering CPI is what I</p> <p>17 understand.</p> <p>18 Q. Okay, were there any implications</p> <p>19 concerning Abbott policy and Abbott's policy that</p> <p>20 employees comply with Medicare and Medicaid fraud and</p> <p>21 abuse statutes implicated through that business</p> <p>22 practice of pricing?</p>	<p>1 context of its decision to increase annually its</p> <p>2 listing catalog prices, while at the same time it was</p> <p>3 decreasing its prices to its customers?</p> <p>4 MS. CITERA: The same objections, and also I</p> <p>5 would caution you not to reveal any privileged</p> <p>6 discussions.</p> <p>7 THE WITNESS: Could you -- I'm not -- what's</p> <p>8 the -- what the kind of predicate of the question? I</p> <p>9 understand -- would you repeat the question?</p> <p>10 THE REPORTER: Sure.</p> <p>11 (Record read.)</p> <p>12 THE WITNESS: I believe an evaluation of</p> <p>13 compliance with laws is what lawyers do, and I think</p> <p>14 that's privileged, a privileged conclusion.</p> <p>15</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. I want to know what Abbott did.</p> <p>18 MS. CITERA: Same objections, same instruction.</p> <p>19 THE WITNESS: Abbott through the conduct of its</p> <p>20 Legal Department would have been making legal</p> <p>21 determination of compliance with law, and that</p> <p>22 conclusion is privileged.</p>

Chicago, IL

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----x
In re: PHARMACEUTICAL INDUSTRY) MDL DOCKET NO.
)
AVERAGE WHOLESALE PRICE) CIVIL ACTION
)
LITIGATION.) 01CV12257-PBS
----- x

VOLUME II

The videotaped 30(b)(6) deposition of ABBOTT (DAVID FISHMAN), called by the United States for examination, taken pursuant to subpoena and pursuant to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Rachel F. Gard, Certified Shorthand Reporter, at 77 West Wacker Drive, Suite 3500, Chicago, Illinois, commencing at 8:35 a.m. on the 20th day of March, A.D., 2008.

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<p style="text-align: right;">Page 423</p> <p>1 Medicare fraud and abuse statute or regulation?</p> <p>2 MS. CITERA: Objection to the form, outside</p> <p>3 the scope.</p> <p>4 BY THE WITNESS:</p> <p>5 A. As I understand reading deposition</p> <p>6 testimony and talking with people, that Abbott did</p> <p>7 not create spread.</p> <p>8 Q. How -- Why do you say that?</p> <p>9 A. My understanding is that Abbott would</p> <p>10 have provided pricing information to the compendia,</p> <p>11 and the compendia then ultimately issued -- issued</p> <p>12 the pricing information. To the extent the spread</p> <p>13 would have been created, that would have created</p> <p>14 the spread.</p> <p>15 Q. But Abbott understood that there was a</p> <p>16 correlation between the provision of its list price</p> <p>17 information to the price reporting compendia and</p> <p>18 the calculation of AWP, correct?</p> <p>19 MS. CITERA: Objection, form, outside the</p> <p>20 scope.</p> <p>21 BY THE WITNESS:</p> <p>22 A. In reading deposition testimony, it</p>	<p style="text-align: right;">Page 425</p> <p>1 BY THE WITNESS:</p> <p>2 A. To the extent there was one, it would be</p> <p>3 privileged.</p> <p>4 Q. My question, sir -- You can answer</p> <p>5 whether or not there was one prepared at a minimum</p> <p>6 and listen to the instruction as to the content.</p> <p>7 My question right now is, was there one prepared?</p> <p>8 MS. CITERA: I don't think he has to answer</p> <p>9 that because I think that is privileged in and of</p> <p>10 itself.</p> <p>11 MS. ST. PETER-GRIFFITH: No, it's not</p> <p>12 privileged in and of itself. The existence of a</p> <p>13 document -- I mean, you folks haven't, I don't</p> <p>14 think, given us a complete privilege log yet. I</p> <p>15 want to know whether or not there was such an</p> <p>16 analysis done or document created. That I'm</p> <p>17 entitled to find out, Toni.</p> <p>18 MS. CITERA: Anything that would have been</p> <p>19 done would have been subject to the privilege,</p> <p>20 would have been subject to the work product. By</p> <p>21 the time we're speaking about, Abbott was obviously</p> <p>22 being investigated and/or sued. That all would</p>
<p style="text-align: right;">Page 424</p> <p>1 appears that there were people within Abbott who</p> <p>2 understood what the compendia did with list price</p> <p>3 information; so understood the relationship.</p> <p>4 "Relationship" is a very broad term. In all</p> <p>5 aspects of a relationship, I can't answer that.</p> <p>6 Generally did they understand that that list</p> <p>7 information was involved in creating AWP?</p> <p>8 Deposition testimony suggests that there were</p> <p>9 people within Abbott who understood that.</p> <p>10 Q. Did anyone within Abbott evaluate whether</p> <p>11 or not the maintenance of high spreads or high</p> <p>12 differentials between contract price and reported</p> <p>13 list price implicated Medicare and Medicaid fraud</p> <p>14 and abuse statutes?</p> <p>15 MS. CITERA: Objection to the form, outside</p> <p>16 the scope. I'm going to also caution you not to</p> <p>17 reveal any legal information.</p> <p>18 BY THE WITNESS:</p> <p>19 A. To the extent there was a legal analysis</p> <p>20 prepared, that would be privileged.</p> <p>21 Q. Was there a legal analysis prepared?</p> <p>22 MS. CITERA: Same objections and instructions.</p>	<p style="text-align: right;">Page 426</p> <p>1 have been privileged.</p> <p>2 MS. ST. PETER-GRIFFITH: Let me be clear. I'm</p> <p>3 not just talking about for the 2003 time period.</p> <p>4 I'm talking about any time from '91 to 2003.</p> <p>5 MS. CITERA: And --</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Was any analysis done?</p> <p>8 A. To my --</p> <p>9 MS. CITERA: Objection to the form, outside</p> <p>10 the scope. Same caution to you.</p> <p>11 BY THE WITNESS:</p> <p>12 A. To my knowledge, both personal knowledge</p> <p>13 and speaking on behalf of Abbott, any questions</p> <p>14 with respect to AWP would have been handled through</p> <p>15 our litigation department.</p> <p>16 Q. Okay. Well, did your litigation</p> <p>17 department do an analysis?</p> <p>18 MS. CITERA: Same objections, same</p> <p>19 instruction.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I don't know.</p> <p>22 Q. Who would know?</p>

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<p style="text-align: right;">Page 635</p> <p>1 reimbursement?</p> <p>2 MS. CITERA: Object to the form, outside the</p> <p>3 scope. I also caution you not to reveal anything --</p> <p>4 any privileged communications or analysis.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I mean, you're not reading the entire</p> <p>7 phrase here. It's -- Again, this is -- this is</p> <p>8 assertion -- this is guidance provided by the</p> <p>9 government on information that otherwise hadn't</p> <p>10 provided guidance on or it wouldn't be current</p> <p>11 guidance.</p> <p>12 Q. Okay. Let me ask it this way: The</p> <p>13 statement reflected on this page, was this Abbott's</p> <p>14 understanding of its obligation under the False</p> <p>15 Claims Act with regard to price reporting that it</p> <p>16 directly or indirectly made?</p> <p>17 MS. CITERA: Objection to the form, outside</p> <p>18 the scope. I also caution you not to reveal any</p> <p>19 privileged communications or analysis.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I think it's a reflection of what OIG is</p> <p>22 stating the requirements to be.</p>	<p style="text-align: right;">Page 637</p> <p>1 A. It identifies it as may be liable.</p> <p>2 Q. Well, did Abbott think that it wasn't</p> <p>3 liable?</p> <p>4 MS. CITERA: Same objections.</p> <p>5 BY THE WITNESS:</p> <p>6 A. You're asking for a legal conclusion.</p> <p>7 Q. What I'm asking for, sir, is did Abbott</p> <p>8 believe or understand that it was required to</p> <p>9 follow what is set forth on this page as a -- an</p> <p>10 obligation of a manufacturer under the False Claims</p> <p>11 Act?</p> <p>12 MS. CITERA: Objection to the form, outside</p> <p>13 the scope.</p> <p>14 BY THE WITNESS:</p> <p>15 A. Abbott absolutely believed that it was</p> <p>16 obligated to follow the federal False Claims Act</p> <p>17 and any other healthcare compliance obligations.</p> <p>18 Q. Okay. And from 1991 through 2003, did</p> <p>19 Abbott follow this guidance that is set forth on</p> <p>20 this page as to its obligations under the False</p> <p>21 Claims Act?</p> <p>22 MS. CITERA: Same objections.</p>
<p style="text-align: right;">Page 636</p> <p>1 Q. Okay. But did Abbott follow the</p> <p>2 requirements set forth on this page?</p> <p>3 MS. CITERA: Same objections.</p> <p>4 BY THE WITNESS:</p> <p>5 A. I don't know that they didn't.</p> <p>6 Q. Okay. Well, do you know that they did?</p> <p>7 A. Back to the testimony I gave last</p> <p>8 Wednesday, which is, this was an evolving</p> <p>9 environment. And once there was clearer guidance</p> <p>10 as to how particular provisions within a statute or</p> <p>11 regulations were being interpreted, Abbott would</p> <p>12 have taken that very seriously and would have</p> <p>13 evaluated its operations in connection with that</p> <p>14 guidance.</p> <p>15 Q. From 1991 through 2003, did Abbott comply</p> <p>16 with what is identified here as a manufacturer's</p> <p>17 obligations under the False Claims Act?</p> <p>18 A. Identifies it as a possible obligation.</p> <p>19 MS. CITERA: Objection to form, outside the</p> <p>20 scope.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. I'm sorry?</p>	<p style="text-align: right;">Page 638</p> <p>1 BY THE WITNESS:</p> <p>2 A. That answer requires a legal conclusion,</p> <p>3 now applying the facts of how Abbott did its --</p> <p>4 conducted its business against the Act, federal</p> <p>5 False Claims Act and reaching a conclusion whether</p> <p>6 or not it complied.</p> <p>7 Q. I'm asking whether what is outlined here</p> <p>8 -- Well, let me ask you, did Abbott with regard to</p> <p>9 prices that it directly or indirectly reported, did</p> <p>10 it ever knowingly or recklessly fail to report</p> <p>11 accurate and complete information concerning its</p> <p>12 discounts, rebates, free goods, upfront payments,</p> <p>13 coupons, goods in kind, free or reduced prices or</p> <p>14 services, grants, or other price concessions or</p> <p>15 similar benefits?</p> <p>16 MS. CITERA: I'm going to object to the form.</p> <p>17 It's clearly asking for a legal conclusion and</p> <p>18 beyond the scope.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. I'm not asking -- I'm asking for Abbott's</p> <p>21 practice.</p> <p>22 A. No, you're asking me did Abbott fail to</p>

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EXHIBIT 25

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----X

In re: PHARMACEUTICAL INDUSTRY)

AVERAGE WHOLESALE PRICE)

LITIGATION) MDL No. 1456

_____) Civil Action No.

) 01-12257-PBS

THIS DOCUMENT RELATES TO:)

United States of America, ex) Judge Patti B. Saris

rel. Ven-a-Care of Florida) Magistrate Judge

Keys, Inc., v. Abbott) Marianne B. Bowler

Laboratories, Inc.,)

CIVIL ACTION NO. 06-11337-PBS)

-----X

Deposition of ERIC FRENCH, taken at 500 West

Jefferson Street, Louisville, Kentucky, commencing

at 9:03 a.m., Wednesday, September 26, 2007, before

Kimberley Ann Keene, RPR No. 041331.

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<p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 FOR THE PLAINTIFF UNITED STATES OF AMERICA</p> <p>4 BY: REBECCA A. FORD, ESQ.</p> <p>5 U.S. Department of Justice</p> <p>6 Commercial Litigation, Fraud</p> <p>7 Civil Division</p> <p>8 601 D. Street, N.W.</p> <p>9 Patrick Henry Building - 9133</p> <p>10 Washington, D.C. 20044</p> <p>11 202.514.1511</p> <p>12 rebecca.ford@usdoj.gov</p> <p>13</p> <p>14 FOR THE STATE OF ARIZONA AND MDL PLAINTIFFS</p> <p>15 WEXLER TORISEVA WALLACE LLP</p> <p>16 BY: AMBER NESBITT, ESQ.</p> <p>17 55 West Monroe</p> <p>18 Suite 3300</p> <p>19 Chicago, Illinois 60603</p> <p>20 (via telephone)</p> <p>21</p> <p>22</p>	<p>1 INDEX</p> <p>2</p> <p>3 WITNESS: ERIC FRENCH PAGE</p> <p>4 Examination by Ms. Ford..... 006, 231, 241</p> <p>5 Examination by Ms. Nesbitt..... 223</p> <p>6 Examination by Mr. Foote..... 227, 248</p> <p>7 Examination by Mr. Cole..... 235</p> <p>8</p> <p>9</p> <p>10 EXHIBITS</p> <p>11 NUMBER DESCRIPTION PAGE</p> <p>12 Exhibit French 1375-ABT-DOJ-E 0007638 to 7639.. 029</p> <p>13 Exhibit French 1376-ABT-DOJ-E 0008348 to 8349.. 036</p> <p>14 Exhibit French 1377-ABT-DOJ 0251692 to 0251703. 043</p> <p>15 Exhibit French 1378-ABGM-000130 to 000169..... 051</p> <p>16 Exhibit French 1379-BMW 159-0016 to 0033..... 056</p> <p>17 Exhibit French 1380-BMW 159-0486 to 0502..... 058</p> <p>18 Exhibit French 1381-VTP 004-0895 to 0912..... 060</p> <p>19 Exhibit French 1382-ABRX-000118 to 000159..... 069</p> <p>20 Exhibit French 1383-ABGM-000065 to 000095..... 080</p> <p>21 Exhibit French 1384-ABRX-000089 to 000117..... 085</p> <p>22 Exhibit French 1385-ABT-DOJ 0184423..... 218</p>
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<p>1 APPEARANCES OF COUNSEL (CONTINUED)</p> <p>2</p> <p>3 FOR THE STATE OF CALIFORNIA</p> <p>4 BY: TIMOTHY FOOTE, ESQ.</p> <p>5 Deputy Attorney General</p> <p>6 Bureau of Medi-Cal Fraud and Elder Abuse</p> <p>7 State of California Department of Justice</p> <p>8 110 West A. Street, No. 1100</p> <p>9 San Diego, California 92101</p> <p>10 619.688.6043</p> <p>11 (via telephone)</p> <p>12</p> <p>13 FOR THE DEFENDANTS ABBOTT LABORATORIES</p> <p>14 JONES DAY</p> <p>15 BY: JEREMY P. COLE, ESQ.</p> <p>16 77 West Wacker</p> <p>17 Chicago, Illinois 60601-1692</p> <p>18 jcole@jonesday.com</p> <p>19 312.782.3939</p> <p>20</p> <p>21 ALSO PRESENT:</p> <p>22 Butch Ellis, Video Operator</p>	<p>1 EXHIBITS (PREVIOUSLY MARKED)</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit Burchieri 1191-ABT072-0565 to 0567..... 193</p> <p>4 Exhibit Burchieri 1192-ABT AWP/MDL 197141 to</p> <p>5 197162..... 142</p> <p>6</p> <p>7 Plaintiff's Exhibit 1321-ABT-DOJ 0085415 to</p> <p>8 0085704..... 091</p> <p>9</p> <p>10 Exhibit Dawson 985-TXABT-E 0003873 to 3889..... 207</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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<p style="text-align: right;">Page 6</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 THE VIDEOGRAPHER: This is Butch Ellis,</p> <p>4 videographer, with Henderson Legal Services. The</p> <p>5 names of all of the other parties present will be</p> <p>6 reflected in the written record.</p> <p>7 This will be the videotape deposition</p> <p>8 of Mr. Eric French. Today's date is September</p> <p>9 26, 2007. We're going on the record at 9:03</p> <p>10 a.m., regarding Pharmaceutical Industry Average</p> <p>11 Wholesale Price Litigation, MDL 1456, civil</p> <p>12 action 01-12257-PBS.</p> <p>13 Swear the witness.</p> <p>14</p> <p>15 ERIC FRENCH,</p> <p>16 called on behalf of the United States, after</p> <p>17 having been duly sworn, was examined and</p> <p>18 testified as follows:</p> <p>19</p> <p>20 EXAMINATION</p> <p>21 BY MS. FORD:</p> <p>22 Q. Good morning, Mr. French.</p>	<p style="text-align: right;">Page 8</p> <p>1 goes to trial, you could be called to be a</p> <p>2 witness for the United States, for Abbott, or for</p> <p>3 any of the other parties taking your deposition</p> <p>4 today?</p> <p>5 A. Yes.</p> <p>6 Q. Are you taking any medications or</p> <p>7 suffering from any conditions that would make it</p> <p>8 difficult for you to give truthful and honest</p> <p>9 testimony today?</p> <p>10 A. No.</p> <p>11 Q. So, is today as good a day as any to</p> <p>12 take your deposition?</p> <p>13 A. Yes.</p> <p>14 Q. Have you been deposed before?</p> <p>15 A. No.</p> <p>16 Q. Okay. I'm going to go over a few</p> <p>17 ground rules with you, so that we're operating</p> <p>18 with the same understanding this morning.</p> <p>19 And the first and most important rule</p> <p>20 is that we not speak over each other. So, I -- I</p> <p>21 will do my best to let you answer a question</p> <p>22 before I ask you a new question, if you could do</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Good morning.</p> <p>2 Q. We met off the record, but for purposes</p> <p>3 of the record, I'll introduce myself again.</p> <p>4 My name is Rebecca Ford, and I</p> <p>5 represent the United States in U.S. ex rel. Ven-</p> <p>6 a-Care of the Florida Keys versus Abbott</p> <p>7 Laboratories.</p> <p>8 That is one of the cases in which</p> <p>9 you're being deposed today.</p> <p>10 Do you understand that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Do you understand that you're</p> <p>13 testifying under oath today?</p> <p>14 A. Yes.</p> <p>15 Q. And that it's the same oath that you</p> <p>16 would take in a court of law?</p> <p>17 A. Yes.</p> <p>18 Q. And that the penalties of perjury apply</p> <p>19 if you do not tell the truth?</p> <p>20 A. Yes.</p> <p>21 Q. Very good.</p> <p>22 Do you understand that if this case</p>	<p style="text-align: right;">Page 9</p> <p>1 your best to let me get my question out before</p> <p>2 you answer.</p> <p>3 Do you understand?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. Great.</p> <p>6 And that's important because the court</p> <p>7 reporter is taking down every word that we say.</p> <p>8 So, if we speak over each other, it's hard for</p> <p>9 her to get all of the information on the record.</p> <p>10 A. Okay.</p> <p>11 Q. And the second rule, for a similar</p> <p>12 reason, is that you answer my questions verbally.</p> <p>13 So, rather than a head shake or a nod or "huh-</p> <p>14 huh" or "uh-huh," if you could do your best to</p> <p>15 answer with a "yes," "no," or a complete</p> <p>16 sentence, that would be helpful.</p> <p>17 A. Yes.</p> <p>18 Q. From time to time, your attorney may</p> <p>19 object today, and he'll typically be doing so for</p> <p>20 purposes of the record. So, unless your attorney</p> <p>21 objects and instructs you not to answer, you're</p> <p>22 still required to answer the question.</p>

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<p style="text-align: right;">Page 10</p> <p>1 Do you understand that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. We'll take breaks from time to</p> <p>4 time, but if at any time you feel like you need a</p> <p>5 break, just let me know and we'll be happy to</p> <p>6 take a break.</p> <p>7 I only ask that you -- if there's a</p> <p>8 question pending, that you answer that question</p> <p>9 before we take a break, okay?</p> <p>10 A. Okay.</p> <p>11 Q. And if at any time you don't understand</p> <p>12 my question, let me know and I'll do my best to</p> <p>13 restate it for you, okay?</p> <p>14 A. Okay.</p> <p>15 Q. And if during the course of the</p> <p>16 deposition you recall some additional information</p> <p>17 or different information relating to an earlier</p> <p>18 answer or to one of my earlier questions, if you</p> <p>19 would please volunteer that information.</p> <p>20 Otherwise, I'm going to assume that the</p> <p>21 questions -- or, excuse me, that the answers that</p> <p>22 you give me are complete and correct; is that --</p>	<p style="text-align: right;">Page 12</p> <p>1 defendant in a lawsuit with the United States?</p> <p>2 A. No.</p> <p>3 Q. Okay. Have you read anything in</p> <p>4 newspapers or in trade publications about Abbott</p> <p>5 being sued relating to average wholesale price</p> <p>6 allegations?</p> <p>7 A. No, I have not.</p> <p>8 Q. Okay. What did you do to prepare for</p> <p>9 your deposition?</p> <p>10 A. I met with Mr. -- Mr. Cole yesterday.</p> <p>11 Q. Okay. And about how long did you meet?</p> <p>12 A. Several hours.</p> <p>13 Q. Okay. Did you review any documents in</p> <p>14 preparation for your deposition?</p> <p>15 A. Yes.</p> <p>16 Q. What documents did you review?</p> <p>17 A. I reviewed one document.</p> <p>18 Q. Do you recall what that document was?</p> <p>19 A. Supply agreement.</p> <p>20 Q. Okay. And who was the supply agreement</p> <p>21 between?</p> <p>22 A. IVMed and Abbott Laboratories.</p>
<p style="text-align: right;">Page 11</p> <p>1 do you understand?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Did you bring any documents with</p> <p>4 you today?</p> <p>5 A. No, I did not.</p> <p>6 Q. Okay. Mr. French, do you have any</p> <p>7 criminal convictions?</p> <p>8 A. No, I do not.</p> <p>9 Q. Okay. Have you ever been arrested?</p> <p>10 A. No, I have not.</p> <p>11 Q. Okay. Do you have an understanding of</p> <p>12 what the cases that you're being deposed in today</p> <p>13 are about?</p> <p>14 A. No.</p> <p>15 Q. So, other than anything that your</p> <p>16 attorney may have told you, you don't know the</p> <p>17 purpose of your deposition today?</p> <p>18 A. That is correct.</p> <p>19 Q. Okay. Prior to being informed that you</p> <p>20 would be deposed today, did you know that Abbott</p> <p>21 was engaged in lawsuits?</p> <p>22 Did you know that Abbott was a</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Okay. Do you recall the date of the</p> <p>2 agreement?</p> <p>3 A. No, I do not.</p> <p>4 Q. Were you a signator on the agreement?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Do you recall who signed the</p> <p>7 agreement for IVMed?</p> <p>8 A. No, I do not.</p> <p>9 Q. Did you review any other documents in</p> <p>10 preparation for your deposition?</p> <p>11 A. No.</p> <p>12 Q. Okay. Did you review any deposition</p> <p>13 transcripts?</p> <p>14 A. No.</p> <p>15 Q. Were any documents read to you during</p> <p>16 your deposition?</p> <p>17 A. During my deposition?</p> <p>18 Q. I'm sorry.</p> <p>19 Were any documents read --</p> <p>20 A. Okay.</p> <p>21 Q. -- to you during your preparation for</p> <p>22 your deposition?</p>

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<p style="text-align: right;">Page 14</p> <p>1 A. No.</p> <p>2 Q. Did you speak with any nonlawyers about</p> <p>3 your deposition today?</p> <p>4 A. Yes.</p> <p>5 Q. And who were those individuals?</p> <p>6 A. My wife.</p> <p>7 Q. Okay.</p> <p>8 A. My manager, and my partner who works</p> <p>9 the same sales territory with me.</p> <p>10 Q. Okay. And what -- what were the nature</p> <p>11 of your discussions with your manager about your</p> <p>12 deposition today?</p> <p>13 A. That I would be out of the field for</p> <p>14 two days.</p> <p>15 Q. Okay. And with your coworker?</p> <p>16 A. That I would be out of the field for</p> <p>17 two days and she would have to cover for me while</p> <p>18 I was gone.</p> <p>19 Q. Okay. Did you have any discussions</p> <p>20 with any Abbott employees regarding why you may</p> <p>21 be being deposed today?</p> <p>22 A. As to why?</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Did you receive an undergraduate --</p> <p>2 undergraduate degree from any of those schools?</p> <p>3 A. Yeah. Hampton University.</p> <p>4 Q. Okay.</p> <p>5 A. In 1991.</p> <p>6 Q. And what was your degree in?</p> <p>7 A. Marketing.</p> <p>8 Q. Have you received any other degrees?</p> <p>9 A. Yes. I have an MBA from Clark Atlanta</p> <p>10 University in 1994.</p> <p>11 Q. Okay.</p> <p>12 A. And I have a master of arts in</p> <p>13 theological studies from the Southern Baptist</p> <p>14 Theological Seminary in December of '06.</p> <p>15 Q. Okay. When did you first become</p> <p>16 employed by Abbott Laboratories?</p> <p>17 A. In 1997.</p> <p>18 Q. I guess prior to your job at Abbott</p> <p>19 Laboratories, did you have any professional jobs?</p> <p>20 A. Yes.</p> <p>21 Q. And what was your first professional</p> <p>22 job after college?</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Yes.</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And who were those discussions</p> <p>4 with?</p> <p>5 A. The person who set up the appointment</p> <p>6 to be here today.</p> <p>7 Q. And who was that individual?</p> <p>8 A. It was someone from the legal side of</p> <p>9 Abbott. I don't remember her name.</p> <p>10 Q. Okay. Aside from the person in the</p> <p>11 legal department, did you have any discussions</p> <p>12 with anyone at Abbott as to why you might be --</p> <p>13 why you might be being deposed?</p> <p>14 A. No.</p> <p>15 Q. Mr. French, did you attend college?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And where did you attend</p> <p>18 college?</p> <p>19 A. Hampton University.</p> <p>20 Q. Okay.</p> <p>21 A. Wingett College, and Clark Atlanta</p> <p>22 University.</p>	<p style="text-align: right;">Page 17</p> <p>1 A. I worked for Ortho Pharmaceuticals from</p> <p>2 1991 to 1992.</p> <p>3 Q. And what position did you hold there?</p> <p>4 A. Customer service supervisor.</p> <p>5 Q. And what was your next job?</p> <p>6 A. The next job would have been with Otis</p> <p>7 Elevator Company, and that was 1994.</p> <p>8 Q. And how long did you hold that</p> <p>9 position?</p> <p>10 A. Until I came to Abbott in 1997.</p> <p>11 Q. Okay. And about what month did you</p> <p>12 come to Abbott?</p> <p>13 A. January.</p> <p>14 Q. Okay. And what was your first position</p> <p>15 at Abbott?</p> <p>16 A. Sales rep.</p> <p>17 Q. And were you assigned to a particular</p> <p>18 division of -- of Abbott?</p> <p>19 A. Yes.</p> <p>20 Q. Which division was that?</p> <p>21 A. Alternate site product sales.</p> <p>22 Q. And how long did you hold that</p>

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<p>1 position?</p> <p>2 A. Until 2000.</p> <p>3 Q. During that time period, of January</p> <p>4 1st, 1997 to 2000, did you have a title?</p> <p>5 Did you have any other titles other</p> <p>6 than sales rep?</p> <p>7 A. No.</p> <p>8 Q. Okay. And in 2000, what was -- after</p> <p>9 2000, what was your next position?</p> <p>10 A. Contract marketing analyst.</p> <p>11 Q. Okay. And do you recall when you took</p> <p>12 that position?</p> <p>13 A. April of 2000.</p> <p>14 Q. And how long did you hold that</p> <p>15 position?</p> <p>16 A. Until June of 2001.</p> <p>17 Q. Okay. And you indicated that you were</p> <p>18 a contract marketing analyst.</p> <p>19 Was that still within the alternate</p> <p>20 site product sales --</p> <p>21 A. Yes.</p> <p>22 Q. -- division of Abbott?</p>	<p>1 A. Yes.</p> <p>2 Q. And what was that position?</p> <p>3 A. Immunology sales representative.</p> <p>4 Q. And what division was that in?</p> <p>5 A. PPD.</p> <p>6 Q. Okay.</p> <p>7 A. Pharmaceutical products division.</p> <p>8 Q. And that was October of 2006?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Is that the position you're</p> <p>11 still in today?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. When you were a -- a sales rep</p> <p>14 in the alternate site product sales division of</p> <p>15 Abbott, who did you report to?</p> <p>16 A. Mike Ramsey.</p> <p>17 Q. Okay. And what was Mr. Ramsey's title?</p> <p>18 A. District manager.</p> <p>19 Q. And were there a number of district</p> <p>20 managers within alternate site?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Do you know who Mr. Ramsey</p>
Page 19	Page 21
<p>1 A. Yes.</p> <p>2 Q. Okay. And are you still an Abbott</p> <p>3 employee today?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. So, what was your next position</p> <p>6 after June of 2001?</p> <p>7 A. Anesthesia specialist.</p> <p>8 Q. Okay. And which division of Abbott was</p> <p>9 that in?</p> <p>10 A. PPD.</p> <p>11 Q. Is that short for pharmaceutical --</p> <p>12 A. I'm sorry. Yes.</p> <p>13 Q. -- products division?</p> <p>14 A. Yes, ma'am.</p> <p>15 Q. Okay. And that would have been June of</p> <p>16 2001; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. And how long -- how long were you an</p> <p>19 anesthesia specialist?</p> <p>20 A. Until October of 2006.</p> <p>21 Q. Okay. And then in October of 2006, did</p> <p>22 you take another position within Abbott?</p>	<p>1 reported to?</p> <p>2 A. It was a national sales director, but I</p> <p>3 don't --</p> <p>4 Q. Do you recall his name?</p> <p>5 A. I don't recall the name.</p> <p>6 Q. Okay. And who were -- who were other</p> <p>7 sales reps in your district at that time?</p> <p>8 A. I don't recall the names.</p> <p>9 Q. Okay. You've mentioned a district</p> <p>10 manager, so I -- I assume that you were assigned</p> <p>11 to a particular district; is that how it worked?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And which district were you</p> <p>14 responsible for, or were you assigned to?</p> <p>15 A. Well, Mike was based out of Kansas</p> <p>16 City, so I guess it would be the Kansas City</p> <p>17 district.</p> <p>18 Q. And within that district, did you have</p> <p>19 an even smaller geographical region to cover?</p> <p>20 A. Yes.</p> <p>21 Q. And what was that region?</p> <p>22 A. The state of Kentucky.</p>

6 (Pages 18 to 21)

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1 Q. Okay. And what were your
2 responsibilities as an alternate site sales rep?
3 A. To maintain the accounts we had -- had
4 established in the state of Kentucky.
5 Q. Do you recall what the -- who -- who
6 some of those accounts were?
7 A. The types or -- well, the types of
8 accounts or specific accounts?
9 Q. Let's start with the types.
10 A. The types of accounts? Home infusion,
11 close door pharmacies, and distributors.
12 Q. And do you recall some of your accounts
13 during that 1997 to 2000 time period?
14 A. Yes.
15 Q. And what were those accounts, or who
16 were those accounts?
17 A. Integrity Health Care is the one that I
18 recall.
19 Q. Do you recall any others?
20 A. No.
21 Q. About -- if you could estimate, about
22 how many accounts did you have at any one time

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1 during your tenure in alternate site as a -- as a
2 sales rep?
3 A. I don't know specifically how many
4 there were. Neighborhood of 30.
5 Q. Okay. Is there something -- is there a
6 reason in particular that Integrity stands out as
7 an account that you recall?
8 A. It was my largest account.
9 Q. Okay. And when you say "largest
10 account," do you mean by sales volume?
11 A. The number of pumps they would purchase
12 made them my largest account.
13 Q. And what types of products were you
14 responsible for selling during that time period?
15 A. We had the Abbott catalog, which had
16 all of our products in it; injectables, tubing,
17 and pumps. And I was responsible for covering
18 those.
19 Q. Okay. You had mentioned a few minutes
20 ago reviewing an agreement that you had signed
21 for IVMed.
22 Reviewing that agreement, did that

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1 refresh your recollection that IVMed was an
2 account that you had responsibility for as an
3 alternate site sales rep?
4 A. No, it did not. No. It didn't.
5 Q. Was the IVMed agreement that you
6 reviewed, was that a document that you signed on
7 behalf of Abbott when you were in alternate site
8 contract marketing?
9 A. Yes.
10 Q. Okay. So, you joined the alternate
11 site marketing department in April of 2000; is
12 that right?
13 A. Yes.
14 Q. Okay. And did you go by any other
15 title there other than analyst?
16 A. No.
17 Q. Did you maintain that alternate site
18 contract marketing analyst title during the
19 entire time that you were in that department?
20 A. Yes.
21 Q. Okay. Did you ever have the title of
22 senior contract analyst?

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1 A. No.
2 Q. Okay. What were your primary
3 responsibilities as an alternate site contract
4 marketing analyst?
5 A. They were twofold. One was to support
6 the sales representatives in the field, and the
7 second part was to support internal staff in
8 dealing with contracts.
9 Q. And who did you report to during that
10 time?
11 A. Lynn Leone.
12 Q. Okay. And was Ms. Leone the manager of
13 contract marketing?
14 A. Yes.
15 Q. Was she the manager during your entire
16 tenure in that department?
17 A. No.
18 Q. Okay. At some point, she left and you
19 -- you had another manager?
20 A. Yes.
21 Q. Okay. And who was that?
22 A. I don't recall the name.

7 (Pages 22 to 25)

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<p style="text-align: right;">Page 26</p> <p>1 Q. Okay. Do you recall about when Ms. 2 Leone left the department? 3 A. A month before I did. So, that would 4 make it May of 2001. 5 Q. Okay. Besides yourself and Ms. Leone, 6 who were the other members of the alternate site 7 contract marketing department while you were 8 there? 9 A. I remember first names. 10 Q. Okay. 11 A. There was Michelle, there was Linda, 12 and there was Debbie. 13 Q. Was Michelle an analyst? 14 A. Yes. 15 Q. Okay. And you mentioned Linda. 16 Could that be Linda Ozark? 17 A. I'm not sure. 18 Q. Okay. What was Linda's position? 19 A. Analyst. 20 Q. Okay. 21 And I'm sorry. The last name that you 22 mentioned?</p>	<p style="text-align: right;">Page 28</p> <p>1 recollection that at least at some point in time, 2 you had responsibility for that account? 3 A. No. 4 Q. It did not? 5 A. No. 6 Q. Okay. Can you think of any other 7 reason you might have signed an agreement on 8 behalf of Abbott for a customer for whom you 9 didn't have responsibility for? 10 A. No. 11 Q. So, just trying to understand: If 12 there's not a reason for you to sign an agreement 13 on behalf of Abbott if it wasn't your account, is 14 it -- is it likely that -- that it was your 15 account at the time? 16 A. I'm not sure. 17 Q. Okay. Can you think of any other 18 reason why you would have signed the agreement if 19 you weren't responsible for IVMed at the time? 20 A. No. 21 Q. Is that something that was routine? 22 A. To be honest, I can't recall.</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Debbie. 2 Q. Debbie. Okay. 3 Is it possible that was Debbie 4 Jonkowski? 5 A. I'm not sure. 6 Q. Okay. So, those individuals were the 7 entirety of the contract marketing department 8 while you were there? 9 A. I'm not sure if that's the entirety, 10 but -- 11 Q. Okay. Those are the ones you recall? 12 A. Those are the ones I remember, yes. 13 Q. Okay. Do you recall what accounts you 14 had responsibility for when you were in alternate 15 site contract marketing? 16 A. No, I do not. 17 Q. Okay. You had mentioned IVMed as an 18 agreement that you signed while you were an 19 alternate site contract marketing analyst; is 20 that correct? 21 A. Yes. 22 Q. Okay. Does that refresh your</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. Okay. During -- going back to the time 2 that you were an alternate site sales rep, who 3 were some of the other sales reps that you worked 4 with? 5 MR. COLE: Object to the form. 6 THE WITNESS: I don't recall. 7 BY MS. FORD: 8 Q. You don't recall the names of anyone 9 else that -- 10 A. No, ma'am. 11 Q. Okay. I'm going to hand you a document 12 that I'll ask the court reporter to mark as 13 Exhibit French 1375. 14 (Deposition Exhibit French 1375 15 was marked for identification and is annexed 16 hereto.) 17 BY MS. FORD: 18 Q. Mr. French, do you recognize this 19 document? 20 A. No. 21 Q. For the record, this is ABT-DOJ-E 22 0007638 through 0007639.</p>

8 (Pages 26 to 29)

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Page 30	Page 32
<p>1 At the top, do you see it says, 2 "Selling Abbott Products by Specialties..."? 3 A. Yes. 4 Q. Do you see that? 5 A. Yes, I do. 6 Q. And then about halfway down the page, 7 the second heading says, "Selling with your 8 Abbott Infusion System Specialist." 9 Do you see that? 10 A. Yes. 11 Q. Okay. And if you could turn to Page 2, 12 do you see your name on the list there? 13 A. Yes. 14 Q. And this is a list of infusion system 15 specialists; is that right? 16 A. Yes. 17 Q. Okay. At what time period did you go 18 by the -- the title of infusion system 19 specialist? 20 A. When I -- 21 MR. COLE: Object to the form. 22 Go ahead. Sorry.</p>	<p>1 list, does it refresh your recollection of some 2 of the other sales reps that you worked with 3 between 1997 and 2000? 4 A. Yes. 5 Q. Okay. Looking at the list, are there 6 any people in particular that you recall working 7 with? 8 A. Doris Roach, on Page 2 -- 9 Q. Okay. 10 A. -- the top, Indiana, we were in the 11 same district together. 12 Q. Okay. 13 A. Daryl Miser, in Kansas, on Page 2, we 14 were in the same district together. 15 Melissa Clark, in Wisconsin, became one 16 of my district managers. 17 Monte Dillow, in Florida, on the first 18 page -- 19 Q. Okay. 20 A. -- became one of my district managers. 21 Joe Sweeney, Illinois, first page, 22 first column, bottom, was in contract marketing.</p>
Page 31	Page 33
<p>1 THE WITNESS: It's okay. 2 To my knowledge, the entire time I was 3 in this position. 4 BY MS. FORD: 5 Q. Okay. What position was this time 6 period? 7 A. When I started in 1997. 8 Q. Okay. So, is infusion system 9 specialist another name for sales rep? 10 A. Yes. 11 Q. Okay. Is -- is that in -- have you 12 seen infusion system specialist before? 13 A. Yes. 14 Q. Okay. 15 A. Yes. 16 Q. So, that was -- that was a terminology 17 that was known to you during that time? 18 A. Yes. 19 Q. Okay. And that was sometimes how sales 20 reps were referred to; is that correct? 21 A. Yes. 22 Q. Okay. Does this -- looking over this</p>	<p>1 And quite honestly, I recognize most of 2 these names as I look at the list. 3 Do you want me to go through the list 4 or -- 5 Q. No. That's okay. 6 So, when would you have -- other than 7 those individuals, or those sales reps, that were 8 in your district, when would you have come in 9 contact with sales reps from outside of your 10 district? 11 A. If we had a joint district meeting, 12 national sales meeting -- 13 Q. Okay. 14 A. -- those would be the two times that I 15 would interact with them when I was a sales 16 representative. 17 Q. Okay. And you had mentioned that you 18 knew Joe Sweeney from contract marketing; is that 19 right? 20 A. Yes. 21 Q. And was Joe Sweeney in contract 22 marketing at the same time that you were?</p>

9 (Pages 30 to 33)

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<p style="text-align: right;">Page 34</p> <p>1 A. He was there before I got there.</p> <p>2 Q. Okay. And when you got there, had he</p> <p>3 already moved on to another position?</p> <p>4 A. No. He was still there.</p> <p>5 Q. He was still there.</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And was Mr. Sweeney in contract</p> <p>8 marketing the entire time that you were there?</p> <p>9 A. No.</p> <p>10 Q. Okay. So, he left that job before you</p> <p>11 did?</p> <p>12 He left that position before you did?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. When you were a sales rep, did</p> <p>15 you have an opportunity to work with national</p> <p>16 account managers on any occasion?</p> <p>17 A. Directly, indirectly, or -- I'm not</p> <p>18 sure.</p> <p>19 Q. Well, we'll start with directly.</p> <p>20 Did you ever work directly with a</p> <p>21 national account manager during your time as an</p> <p>22 alternate site sales rep?</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Okay. But you don't recall any</p> <p>2 particular working relationship with Mr. Miller?</p> <p>3 A. I don't believe we worked together.</p> <p>4 Q. Okay. I'm going to hand you what I'll</p> <p>5 ask the court reporter to mark as Exhibit French</p> <p>6 1376.</p> <p>7 (Deposition Exhibit French 1376</p> <p>8 marked for identification and is annexed hereto.)</p> <p>9 BY MS. FORD:</p> <p>10 Q. If you could take a look at that</p> <p>11 document.</p> <p>12 For the record, this is ABT-DOJ-E</p> <p>13 0008348 through 0008349.</p> <p>14 Mr. French, does this appear to be an</p> <p>15 interoffice correspondence from Jack Miller to</p> <p>16 Pete Baker?</p> <p>17 A. Yes.</p> <p>18 Q. And it's dated April 15th, 1997?</p> <p>19 A. Yes.</p> <p>20 Q. Do you see on the -- on the Re: line,</p> <p>21 it says, "Significant Events."</p> <p>22 Do you see that?</p>
<p style="text-align: right;">Page 35</p> <p>1 A. No.</p> <p>2 Q. Okay. And did you work with any</p> <p>3 national account managers indirectly?</p> <p>4 A. Yes. I would -- yes.</p> <p>5 Q. Okay. And under what circumstances</p> <p>6 would you work with the national account manager</p> <p>7 indirectly?</p> <p>8 A. At national sales meetings, they would</p> <p>9 come in and give presentations to the entire</p> <p>10 sales force as to what they were doing with their</p> <p>11 particular accounts.</p> <p>12 Q. Okay. Do you know -- do you know a</p> <p>13 person by the name of Jack Miller?</p> <p>14 A. I know the name, yes.</p> <p>15 Q. Okay. Do you recall ever working with</p> <p>16 Mr. Miller during the time that you were a sales</p> <p>17 rep?</p> <p>18 A. I met Mr. Miller when I first joined</p> <p>19 the sales force.</p> <p>20 Q. Okay. Did you meet him at a national</p> <p>21 sales meeting or something of that nature?</p> <p>22 A. I can't recall.</p>	<p style="text-align: right;">Page 37</p> <p>1 A. Yes.</p> <p>2 Q. When you were in alternate site as a</p> <p>3 sales rep, were you required to report</p> <p>4 significant events on a routine basis?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And did -- did that report or --</p> <p>7 did that correspondence, was that referred to as</p> <p>8 a significant events report?</p> <p>9 A. I don't recall the specific name of it.</p> <p>10 Q. Okay.</p> <p>11 A. But that's what they were.</p> <p>12 Q. Okay. Does this look to be a similar</p> <p>13 type of communication?</p> <p>14 MR. COLE: Object to the form.</p> <p>15 THE WITNESS: I'm not sure.</p> <p>16 BY MS. FORD:</p> <p>17 Q. Okay. How did your significant events</p> <p>18 communications look?</p> <p>19 Did you do it in written form?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And did you provide a copy of</p> <p>22 that written document to your supervisor?</p>

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<p style="text-align: right;">Page 38</p> <p>1 A. Yes.</p> <p>2 Q. And would that have been your district</p> <p>3 manager?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And how often did you prepare a</p> <p>6 significant event communication?</p> <p>7 A. If I recall correctly, monthly.</p> <p>8 Q. Okay. And so, here we see Mr. Miller</p> <p>9 reporting to Mr. Baker about significant events</p> <p>10 in the past 30 days; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So, that would -- would that be</p> <p>13 similar to the approach that you would have taken</p> <p>14 in reporting to your supervisor about significant</p> <p>15 events?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. If you turn to Page 2 of the</p> <p>18 document, and not quite to the middle of the</p> <p>19 page, you'll see the second paragraph above the -</p> <p>20 - the heading "Next 30 Days."</p> <p>21 It says, "Assisted Eric French and Mike</p> <p>22 Ramsey with placement of six additional AIM plus</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Okay. Does this refresh your</p> <p>2 recollection about working with Mr. Miller any</p> <p>3 time during your tenure as an --</p> <p>4 A. No.</p> <p>5 Q. -- alternate site sales rep?</p> <p>6 A. No, it does not.</p> <p>7 Q. Okay. Is the statement here in this</p> <p>8 document consistent with your recollection that</p> <p>9 Integrity was -- was a PBI member?</p> <p>10 MR. COLE: Object to the form.</p> <p>11 THE WITNESS: I don't recall if,</p> <p>12 specifically, they were a PBI member.</p> <p>13 BY MS. FORD:</p> <p>14 Q. Okay. Does that appear to be what Mr.</p> <p>15 Miller is conveying here?</p> <p>16 MR. COLE: Object to the form.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MS. FORD:</p> <p>19 Q. Although you don't recall this</p> <p>20 particular situation, would it have been atypical</p> <p>21 for you to work with national account managers in</p> <p>22 situations similar to this?</p>
<p style="text-align: right;">Page 39</p> <p>1 pumps at Integrity, Louisville, Kentucky. That</p> <p>2 makes Forty in this PBI/PAPA account."</p> <p>3 Did I read that accurately?</p> <p>4 A. Yes, you did.</p> <p>5 Q. Okay. And I believe you testified</p> <p>6 earlier that Integrity was one of your accounts</p> <p>7 when you were a sales rep?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And who was Mike Ramsey?</p> <p>10 A. My district manager.</p> <p>11 Q. Oh, I'm sorry. That's right.</p> <p>12 A. Yeah.</p> <p>13 Q. You have already testified to that.</p> <p>14 Okay.</p> <p>15 Do you recall working with -- does this</p> <p>16 refresh your recollection about working with Mr.</p> <p>17 Miller, who at the time was a national account</p> <p>18 manager? Is that right?</p> <p>19 A. Two questions.</p> <p>20 Q. Okay. Did you understand Mr. Miller to</p> <p>21 be a national account manager?</p> <p>22 A. Based on this, yes.</p>	<p style="text-align: right;">Page 41</p> <p>1 MR. COLE: Object to the form.</p> <p>2 THE WITNESS: No.</p> <p>3 BY MS. FORD:</p> <p>4 Q. Okay. So, can you think of a reason</p> <p>5 why Mr. Miller would have been assisting in</p> <p>6 placing AIM pumps at Integrity?</p> <p>7 MR. COLE: Object to the form.</p> <p>8 THE WITNESS: Could you restate that</p> <p>9 again?</p> <p>10 BY MS. FORD:</p> <p>11 Q. Sure. Uh-huh.</p> <p>12 Mr. Miller reported to his supervisor</p> <p>13 that he assisted you and Mike Ramsey with</p> <p>14 placement of AIM plus pumps at Integrity; is that</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. That's what this is reporting?</p> <p>18 A. Yes.</p> <p>19 Q. Right.</p> <p>20 Can you think of situations where a</p> <p>21 national account manager's assistance would have</p> <p>22 been necessary in placing pumps or other products</p>

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<p style="text-align: right;">Page 42</p> <p>1 with -- with your accounts?</p> <p>2 A. Given the number of pumps we're talking</p> <p>3 about, that could be a situation where a national</p> <p>4 account manager would get involved.</p> <p>5 Q. Is that because six pumps is a -- a</p> <p>6 large number in that situation or -- I guess what</p> <p>7 is it about the number of pumps that makes you</p> <p>8 think that that would be a situation that would</p> <p>9 involve a NAM?</p> <p>10 A. The total amount of pumps, which is 40.</p> <p>11 It's not the six. It's the 40.</p> <p>12 Q. Okay.</p> <p>13 A. And I would have gone to my manager and</p> <p>14 said, you know, "This account now has 40 pumps in</p> <p>15 it, so this account is becoming very large," to</p> <p>16 which my manager would turn around to the</p> <p>17 national account manager and say, "Hey, this is</p> <p>18 becoming a large account, and this should come to</p> <p>19 your attention."</p> <p>20 Q. Okay.</p> <p>21 A. So, I'm not necessarily talking to the</p> <p>22 -- a national account manager, but my manager is</p>	<p style="text-align: right;">Page 44</p> <p>1 MR. COLE: -- flip through the</p> <p>2 document? Thank you.</p> <p>3 MS. FORD: I was actually going to</p> <p>4 direct you to a certain page. I just wanted to</p> <p>5 ask you a particular question about one item on -</p> <p>6 - on the page, but --</p> <p>7 MR. COLE: Okay. Do you mind if he --</p> <p>8 MS. FORD: No.</p> <p>9 MR. COLE: Okay.</p> <p>10 BY MS. FORD:</p> <p>11 Q. Mr. French, if it helps you, on Page 3,</p> <p>12 your name is listed in one of the columns, and a</p> <p>13 title is listed next to it. I was just going to</p> <p>14 ask you about that particular position and title.</p> <p>15 It's about halfway down the page, if</p> <p>16 you see "Evansville, Indiana"?</p> <p>17 A. Yes.</p> <p>18 Q. And then "Eric C. French."</p> <p>19 Is that you?</p> <p>20 A. Yes, it is.</p> <p>21 Q. Okay. And it says, "Perioperative</p> <p>22 Sales Specialist"; is that right?</p>
<p style="text-align: right;">Page 43</p> <p>1 talking to that individual.</p> <p>2 Q. Okay.</p> <p>3 A. The hierarchy is that you always go</p> <p>4 through your district manager. You don't jump</p> <p>5 levels to talk to people.</p> <p>6 Q. Sure.</p> <p>7 Thank you. That helps me understand.</p> <p>8 A. Okay.</p> <p>9 Q. I'm going to hand you what I'll ask the</p> <p>10 court reporter to mark as Exhibit French 1377.</p> <p>11 (Deposition Exhibit French 1377</p> <p>12 marked for identification and is annexed hereto.)</p> <p>13 BY MS. FORD:</p> <p>14 Q. For the record, this is ABT-DOJ-0251692</p> <p>15 through 0251703.</p> <p>16 Mr. French, do you see, in the bottom</p> <p>17 right-hand corner, a date of April 17th, 2002?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 MR. COLE: Could he have a minute,</p> <p>21 Becky, just to --</p> <p>22 MS. FORD: Sure.</p>	<p style="text-align: right;">Page 45</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And was that the -- a position</p> <p>3 that you held in April of 2002?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. So, would that have been the</p> <p>6 time that you were an anesthesia specialist?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So, is this another title for</p> <p>9 that position?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. What were your duties as an</p> <p>12 anesthesia specialist or perioperative sales</p> <p>13 specialist?</p> <p>14 A. My primary responsibility was to call</p> <p>15 on hospital accounts selling a product called</p> <p>16 Ultane.</p> <p>17 Q. Ultane; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. Is that U-L-T-A-N-E?</p> <p>20 A. U-L-T-A-N-E, yes.</p> <p>21 Q. Okay. And what is Ultane?</p> <p>22 A. It's a gas to help patients go to</p>

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<p style="text-align: right;">Page 46</p> <p>1 sleep.</p> <p>2 Q. And in what context is it used?</p> <p>3 A. For surgery.</p> <p>4 Q. Okay. And I believe you testified that</p> <p>5 -- that was in the pharmaceutical products</p> <p>6 division; is that right?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And who was your supervisor</p> <p>9 there?</p> <p>10 A. Melissa Clark.</p> <p>11 Q. And what was her title?</p> <p>12 A. District manager.</p> <p>13 Q. Okay.</p> <p>14 A. Monte Dillow -- I had three.</p> <p>15 Q. Oh, okay.</p> <p>16 Was he also a district manager?</p> <p>17 A. District manager.</p> <p>18 Q. Okay.</p> <p>19 A. Linda Fletcher. Also a district</p> <p>20 manager.</p> <p>21 Q. And I -- I presume these were all</p> <p>22 district managers at varying times during your</p>	<p style="text-align: right;">Page 48</p> <p>1 persons who actually input the contracts into the</p> <p>2 computer system. They load the contracts --</p> <p>3 Q. Okay.</p> <p>4 A. -- into the system.</p> <p>5 Q. So, would it be the case that you were</p> <p>6 providing information to the contract marketing</p> <p>7 coordinator about the particular contract, and</p> <p>8 they would actually be doing the data entry?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And in what types of situations,</p> <p>11 when you were -- when you were a contract</p> <p>12 marketing analyst, would you work with national</p> <p>13 account managers?</p> <p>14 A. On their -- on their larger accounts,</p> <p>15 if they were, let's say, putting together a pump</p> <p>16 deal for an account, they would involve a</p> <p>17 contract marketing analyst.</p> <p>18 Q. And what would be your responsibility</p> <p>19 in that situation?</p> <p>20 A. Pricing and actually writing the</p> <p>21 contract.</p> <p>22 Q. Okay. And would that have been a</p>
<p style="text-align: right;">Page 47</p> <p>1 tenure in that department?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. I want to go back now to the</p> <p>4 time period that you were in the alternate site</p> <p>5 contract marketing department, and I believe that</p> <p>6 you indicated for most of your tenure there, with</p> <p>7 the exception of about a month, that Lynn Leone</p> <p>8 was your manager; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Aside from the individuals that you</p> <p>11 worked with within alternate site contract</p> <p>12 marketing, did you work with others, other</p> <p>13 employees of alternate sites?</p> <p>14 A. Yes.</p> <p>15 Q. And what categories of employees would</p> <p>16 you work with in alternate sites?</p> <p>17 A. Sales reps, marketing managers,</p> <p>18 national account managers, contract marketing</p> <p>19 coordinators, and the general manager.</p> <p>20 Q. Okay. And what is a contract marketing</p> <p>21 coordinator?</p> <p>22 A. The best description is, they're the</p>	<p style="text-align: right;">Page 49</p> <p>1 similar working relationship with the sales</p> <p>2 representatives?</p> <p>3 A. Yes.</p> <p>4 Q. Providing pricing and writing the</p> <p>5 contract for their accounts?</p> <p>6 A. For the pumps, yes.</p> <p>7 Q. Okay. During your time in alternate</p> <p>8 site contract marketing, were you only</p> <p>9 responsible for the pump part of the business?</p> <p>10 A. No.</p> <p>11 Q. Okay. With respect to injectables and</p> <p>12 the other products that alternate site sold, what</p> <p>13 were your job responsibilities?</p> <p>14 A. I also handled the contracts for buying</p> <p>15 groups, in addition to working with the sales</p> <p>16 reps.</p> <p>17 Q. Okay. And what is a buying group?</p> <p>18 A. My definition of a buying group is when</p> <p>19 a group of individuals come together and they use</p> <p>20 their combined purchasing power to negotiate with</p> <p>21 another entity. So, that would be a buying group</p> <p>22 --</p>

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<p style="text-align: right;">Page 50</p> <p>1 Q. Okay.</p> <p>2 A. -- to me.</p> <p>3 Q. So, they are groups of -- home infusion</p> <p>4 pharmacies, for example, could form a buying</p> <p>5 group?</p> <p>6 Individual home infusion pharmacies</p> <p>7 would --</p> <p>8 A. Could belong to a buying group?</p> <p>9 Q. Yeah.</p> <p>10 A. Yes.</p> <p>11 Q. Come together and -- and join a buying</p> <p>12 group to get better buying power when they're</p> <p>13 dealing with Abbott.</p> <p>14 Is that --</p> <p>15 A. Yes.</p> <p>16 Q. -- an example?</p> <p>17 A. Yeah. That's my understanding of it.</p> <p>18 Q. Okay. And in what context would you</p> <p>19 work with marketing managers as an analyst?</p> <p>20 A. Once again, concerning the pumps,</p> <p>21 because a marketing manager would have a</p> <p>22 responsibility for particular products. Not just</p>	<p style="text-align: right;">Page 52</p> <p>1 an award like this come about?</p> <p>2 A. Can I look at it for just a second?</p> <p>3 Q. Sure. Absolutely.</p> <p>4 A. Two -- two ways: The first would be if</p> <p>5 they requested a proposal for a new contract, or</p> <p>6 the second would be the contract anniversary,</p> <p>7 which basically means every year, there's an --</p> <p>8 there's a clause in the contract with the company</p> <p>9 where we review it on a yearly basis, and we had</p> <p>10 the right to take a price increase, if necessary.</p> <p>11 So, for either one of those two</p> <p>12 situations, a document like this would be sent to</p> <p>13 the company.</p> <p>14 Q. So, it could either be a new award or</p> <p>15 an annual update; is that --</p> <p>16 A. Correct. Yes.</p> <p>17 Q. Is that a fair summary?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. In an instance of a new award, would</p> <p>22 you receive some specifications from the</p>
<p style="text-align: right;">Page 51</p> <p>1 pumps, but any particular product. And I would</p> <p>2 interact with them if we were putting together</p> <p>3 pump deals or pricing or something of that</p> <p>4 nature.</p> <p>5 Q. Okay. I'm going to hand you what I'll</p> <p>6 ask the court reporter to mark as Exhibit French</p> <p>7 1378.</p> <p>8 (Deposition Exhibit French 1378</p> <p>9 marked for identification and is annexed hereto.)</p> <p>10 THE WITNESS: Thank you.</p> <p>11 THE REPORTER: You're welcome.</p> <p>12 BY MS. FORD:</p> <p>13 Q. And for the record, this is ABGM-000130</p> <p>14 through 000169.</p> <p>15 Mr. French, do you recognize this</p> <p>16 document?</p> <p>17 A. Not this specific document, but what</p> <p>18 the document is, yes, ma'am.</p> <p>19 Q. Okay. And what is the document?</p> <p>20 A. It looks like it's an award to GeriMed</p> <p>21 for Abbott products.</p> <p>22 Q. And how would this type of -- how would</p>	<p style="text-align: right;">Page 53</p> <p>1 customers here, such as GeriMed, and -- and bid</p> <p>2 on -- and bid for Abbott on getting that</p> <p>3 contract?</p> <p>4 A. A company would tell us what they</p> <p>5 wanted. These are the products that we want to</p> <p>6 purchase from you.</p> <p>7 Q. Okay.</p> <p>8 A. So, yes.</p> <p>9 Q. And how about in an annual update?</p> <p>10 How would it come about that you would</p> <p>11 prepare some sort of analyses or pricing for the</p> <p>12 customer in an annual update situation?</p> <p>13 A. If I understand your question</p> <p>14 correctly, it would be dictated by the contract.</p> <p>15 They would have an anniversary date in their</p> <p>16 contract, and when that came up, we would</p> <p>17 initiate the process of reviewing all of their</p> <p>18 products. They wouldn't call us. We would</p> <p>19 initiate it from our side.</p> <p>20 Q. Okay. So, for a new award, you may be</p> <p>21 first contacted by the customer and asked to bid</p> <p>22 on their contract; is that right?</p>

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<p style="text-align: right;">Page 54</p> <p>1 A. Yes.</p> <p>2 Q. And then for an annual update, Abbott</p> <p>3 would actually initiate the process of providing</p> <p>4 new pricing; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Looking at this letter, can you</p> <p>7 tell whether this is an annual award -- I'm</p> <p>8 sorry, new award or an annual update?</p> <p>9 A. From the cover letter, no. But if you</p> <p>10 go to the second page and look at -- it says,</p> <p>11 "General Information, Manufacturer Name, Contract</p> <p>12 Date." It says, "August 1st, 2000, through</p> <p>13 August 31st, 2001."</p> <p>14 Q. Or July 31st?</p> <p>15 A. I'm sorry. July 31st.</p> <p>16 Q. Okay.</p> <p>17 A. And that's a one year time frame.</p> <p>18 Q. Okay.</p> <p>19 A. So, that would lead me to believe that</p> <p>20 this is an anniversary opposed to a new contract.</p> <p>21 Q. Okay. So, in this situation, then,</p> <p>22 Abbott would have generated information about</p>	<p style="text-align: right;">Page 56</p> <p>1 looking at?</p> <p>2 A. No.</p> <p>3 MR. COLE: Object to the form.</p> <p>4 BY MS. FORD:</p> <p>5 Q. Okay. But you do recall that this is a</p> <p>6 format that's familiar to you from being in</p> <p>7 alternate site contract marketing; is that right?</p> <p>8 A. Yes.</p> <p>9 MR. COLE: Object to the form.</p> <p>10 BY MS. FORD:</p> <p>11 Q. Okay. I'm going to hand you what I'll</p> <p>12 ask the court reporter to mark as Exhibit French</p> <p>13 1379.</p> <p>14 (Deposition Exhibit French 1379</p> <p>15 marked for identification and is annexed hereto.)</p> <p>16 BY MS. FORD:</p> <p>17 Q. And for the record, this is Bates</p> <p>18 labeled BMW-1590016 through 1590033.</p> <p>19 Mr. French, if you could turn several</p> <p>20 pages back, and the number at the bottom right-</p> <p>21 hand corner that I've been referring to is</p> <p>22 1590022.</p>
<p style="text-align: right;">Page 55</p> <p>1 pricing and provided it to the customer, in this</p> <p>2 instance, GeriMed; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Does this format of the -- the</p> <p>5 attachment to this letter look familiar to you?</p> <p>6 A. Yes. Vaguely, it does.</p> <p>7 Q. Okay. So, do you recall this as a</p> <p>8 format that was used in alternate site contract</p> <p>9 marketing for things such as annual updates?</p> <p>10 MR. COLE: Object to the form.</p> <p>11 THE WITNESS: In this particular case,</p> <p>12 yes.</p> <p>13 BY MS. FORD:</p> <p>14 Q. Okay.</p> <p>15 A. I can't say if it was always used --</p> <p>16 Q. Okay.</p> <p>17 A. -- for everything.</p> <p>18 Q. Is it -- is it a form that you used on</p> <p>19 more than one occasion?</p> <p>20 A. Now, that I don't recall.</p> <p>21 Q. Okay. Do you recall the specific</p> <p>22 letter and the -- and attachment here that we're</p>	<p style="text-align: right;">Page 57</p> <p>1 Are you -- you're on that page?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And do you see, at the bottom of</p> <p>4 the page, this -- this appears to be the</p> <p>5 signature page of an IVMed pharmaceutical supply</p> <p>6 agreement; is that right?</p> <p>7 A. Yes.</p> <p>8 Q. And this is an agreement between Abbott</p> <p>9 Laboratories and IVMed; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And the page that we're looking</p> <p>12 at now, do you see your name and signature there?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And it appears that you signed</p> <p>15 this agreement on behalf of Abbott; is that</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And then if you look above the</p> <p>19 signature block with your name, you see a Donald</p> <p>20 L. Mays; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. And Mr. Mays appears to be signing the</p>

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<p style="text-align: right;">Page 58</p> <p>1 agreement on behalf of IVMed; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you -- does Mr. Mays' name</p> <p>4 sound familiar to you?</p> <p>5 Do you recall working with him?</p> <p>6 A. No.</p> <p>7 Q. Okay. Is this the agreement that you</p> <p>8 looked at in preparation for your deposition?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. It appears to be?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. I'm going to hand you now what</p> <p>13 I'll ask the court reporter to mark as Exhibit</p> <p>14 French 1380.</p> <p>15 (Deposition Exhibit French 1380</p> <p>16 marked for identification and is annexed hereto.)</p> <p>17 THE WITNESS: Thank you.</p> <p>18 BY MS. FORD:</p> <p>19 Q. And for the record, this is BMW159-0486</p> <p>20 through 159-0502.</p> <p>21 Mr. French, does this appear to be a</p> <p>22 pharmaceutical supply agreement between Abbott</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Exhibit French 1379?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. I'm going to hand you what I'll</p> <p>4 ask the court reporter to mark as Exhibit French</p> <p>5 1381.</p> <p>6 (Deposition Exhibit French 1381</p> <p>7 marked for identification and is annexed hereto.)</p> <p>8 BY MS. FORD:</p> <p>9 Q. And for the record, this is Bates</p> <p>10 labeled VTP004-0895 through 004-0912.</p> <p>11 Mr. French, does this appear to be a</p> <p>12 letter dated May 25th, 2001, from yourself to</p> <p>13 Donald Mays of GeriMed?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And is this -- does this appear</p> <p>16 to be the same Donald Mays that signed the</p> <p>17 agreements on behalf of RxMed and IVMed?</p> <p>18 A. Yes, it does.</p> <p>19 Q. Okay. Did you understand GeriMed,</p> <p>20 RxMed and IVMed to be somehow related?</p> <p>21 A. Sitting here right now, I don't recall.</p> <p>22 Q. Okay. Sitting here today, does it --</p>
<p style="text-align: right;">Page 59</p> <p>1 Laboratories and RxMed?</p> <p>2 A. Yes.</p> <p>3 MR. COLE: Could he have a minute,</p> <p>4 Becky, just to flip through the document?</p> <p>5 MS. FORD: Sure.</p> <p>6 BY MS. FORD:</p> <p>7 Q. Have you had a chance to review it?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. If you could turn about four</p> <p>10 pages back or five pages back. It's Page 159-</p> <p>11 0490.</p> <p>12 And do you see your name as the</p> <p>13 signator for Abbott Laboratories on this</p> <p>14 agreement?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And above that, the signator for</p> <p>17 RxMed is Donald Mays; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And that's the same individual</p> <p>20 who signed the agreement on behalf of IVMed; is</p> <p>21 that right?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 61</p> <p>1 does it stand to reason that if the same</p> <p>2 individual is signing contracts on behalf of</p> <p>3 IVMed, RxMed, and GeriMed, that they're somehow</p> <p>4 related?</p> <p>5 A. That I don't know for sure.</p> <p>6 Q. Okay. But you do agree with me that</p> <p>7 Mr. Mays is receiving correspondence and signing</p> <p>8 agreements on behalf of IVMed, RxMed, and</p> <p>9 GeriMed; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And those are all accounts that</p> <p>12 you had -- you had some responsibility for as a</p> <p>13 contract analyst?</p> <p>14 A. Based upon my signature on these,</p> <p>15 potentially, yes.</p> <p>16 Q. Okay. Potentially or probably?</p> <p>17 A. I don't recall, to be honest, so --</p> <p>18 Q. Okay. But, I mean, is it more than</p> <p>19 just a possibility?</p> <p>20 I mean, you've seen the agreements</p> <p>21 here, and I can show you more, with IVMed, RxMed,</p> <p>22 and GeriMed, and you're signing on behalf of</p>

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<p style="text-align: right;">Page 62</p> <p>1 Abbott.</p> <p>2 So, doesn't --</p> <p>3 A. Yes.</p> <p>4 Q. -- that lead you to believe that --</p> <p>5 that you had at least some responsibility for</p> <p>6 these accounts during your time in contract</p> <p>7 marketing?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. If you turn to Page 2 of this</p> <p>10 Exhibit French 1381, this is a GeriMed</p> <p>11 pharmaceutical supply agreement; is that right?</p> <p>12 A. Yes.</p> <p>13 MR. COLE: Could he have a moment to</p> <p>14 look --</p> <p>15 MS. FORD: Sure.</p> <p>16 MR. COLE: -- through the document,</p> <p>17 Becky?</p> <p>18 THE WITNESS: Okay.</p> <p>19 BY MS. FORD:</p> <p>20 Q. And I believe the question that was</p> <p>21 pending is: This appears to be a pharmaceutical</p> <p>22 supply agreement between Abbott and GeriMed; is</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Okay. Do you believe, through this</p> <p>2 letter, you were transmitting bid information to</p> <p>3 Mr. Mays for GeriMed?</p> <p>4 A. Yes.</p> <p>5 Q. So, it was actually Abbott pricing on -</p> <p>6 - on the GeriMed bid?</p> <p>7 MR. COLE: Object to the form.</p> <p>8 THE WITNESS: According to this letter,</p> <p>9 yes.</p> <p>10 BY MS. FORD:</p> <p>11 Q. Okay. And it references an -- an</p> <p>12 enclosed disk one and disk two.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. During your time in alternate site</p> <p>16 contract marketing, was it typical to provide</p> <p>17 customers pricing information in electronic form?</p> <p>18 A. I'm not sure.</p> <p>19 Q. You don't recall?</p> <p>20 A. I don't recall.</p> <p>21 Q. Okay. Looking at this letter, does it</p> <p>22 refresh your recollection in any way about what</p>
<p style="text-align: right;">Page 63</p> <p>1 that correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And if you turn several pages</p> <p>4 back, and the number on the bottom right-hand</p> <p>5 side is 004-0903.</p> <p>6 A. What was that again?</p> <p>7 Q. 004-0903.</p> <p>8 And do you see your name in the</p> <p>9 signature block at the bottom of the page?</p> <p>10 A. Yes.</p> <p>11 Q. And does it appear to you that you're</p> <p>12 signing this GeriMed pharmaceutical supply</p> <p>13 agreement on behalf of Abbott?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. If you could turn back to Page 1</p> <p>16 of the exhibit. The letters says, "Dear Mr.</p> <p>17 Mays, thank you for an extension in submitting</p> <p>18 this bid. Please find enclosed disk one, disk</p> <p>19 two," and then in parentheses, "(original disk</p> <p>20 did not work)."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 65</p> <p>1 type of information may have been contained on</p> <p>2 the enclosed disks?</p> <p>3 A. It would have been pricing --</p> <p>4 Q. Okay.</p> <p>5 A. -- information, looking at this letter.</p> <p>6 Q. Okay. And typically, when you conveyed</p> <p>7 pricing information on a contract that you were</p> <p>8 bidding on, an award that you were bidding on,</p> <p>9 what would be included in that pricing</p> <p>10 information?</p> <p>11 What types of information would you</p> <p>12 have included in -- in response?</p> <p>13 A. What I remember is, current price --</p> <p>14 well, NDC, product name, current price, new</p> <p>15 price, and usage. And then there would be a</p> <p>16 percent change between the current price and the</p> <p>17 new price.</p> <p>18 Q. And in the scenario that you're just</p> <p>19 describing, would that be for an annual -- an</p> <p>20 annual update?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So, you're comparing the old</p>

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<p style="text-align: right;">Page 66</p> <p>1 prices that the customer paid with Abbott to the</p> <p>2 new pricing increase that's going to take effect?</p> <p>3 A. Right.</p> <p>4 Q. Okay. And what about for a new award?</p> <p>5 What type of pricing information would</p> <p>6 you provide in response to a bid request?</p> <p>7 A. Best of my recollection, it would be</p> <p>8 NDC, it would be the product name, and the price</p> <p>9 at which we're offering that particular product.</p> <p>10 Q. If you could look back at Exhibit</p> <p>11 French 1378, which you should have in front of</p> <p>12 you.</p> <p>13 The first page of that exhibit is a</p> <p>14 letter.</p> <p>15 It's dated June 21st, 2000?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And if you could turn to Page 2.</p> <p>18 This is the attachment titled, "2000</p> <p>19 Manufacturer Listing of Pharmaceutical Awards</p> <p>20 GeriMed."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 68</p> <p>1 rows going down that column, "SMD," for example.</p> <p>2 What -- do you know what those stand</p> <p>3 for?</p> <p>4 A. No.</p> <p>5 Q. Do you know what that column -- what</p> <p>6 type of information that column is trying to</p> <p>7 convey?</p> <p>8 A. I don't recall what that is.</p> <p>9 Q. Okay. And what about the column that's</p> <p>10 titled "FDA"?</p> <p>11 A. No.</p> <p>12 Q. Okay. Was providing AWP information in</p> <p>13 pricing to Abbott's customers a common practice</p> <p>14 when you were in contract marketing?</p> <p>15 A. I don't recall.</p> <p>16 Q. Okay. You just don't recall one way or</p> <p>17 the other whether that was --</p> <p>18 A. I don't -- I don't remember.</p> <p>19 Q. Okay. Do you recall in dealing with</p> <p>20 the GeriMed, RxMed, and IVMed accounts that they</p> <p>21 were interested in the AWP on Abbott's products?</p> <p>22 A. No. I don't recall if they were.</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. Okay. So, here in this document, we've</p> <p>2 got the generic name, the brand name, a column</p> <p>3 for FDA, column for NDC, package size, contract</p> <p>4 price, AWP, dollar dif AWP, type, effective date,</p> <p>5 and pricing end date; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do you recall including AWP</p> <p>8 information in your pricing?</p> <p>9 A. No.</p> <p>10 Q. Does this refresh your recollection</p> <p>11 that at least in the instance of GeriMed, you</p> <p>12 included AWP information in the pricing?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And then what -- what does the</p> <p>15 column "dollar dif AWP" stand for?</p> <p>16 A. I don't know.</p> <p>17 Q. Okay. Looking at it, does it appear to</p> <p>18 be the difference between the contract price and</p> <p>19 the AWP?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And then under the column of</p> <p>22 "type," there are letters in that column, in the</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Okay. Can you think of a reason why</p> <p>2 you would have included the AWP in -- in a column</p> <p>3 for the difference between the contract price and</p> <p>4 the AWP on the GeriMed award if it wasn't</p> <p>5 something that the customer was interested in?</p> <p>6 A. No.</p> <p>7 Q. Okay. Can't think of any other reason?</p> <p>8 A. No, ma'am.</p> <p>9 Q. Okay. I'm going to hand you an exhibit</p> <p>10 that I'll ask the court reporter to mark as</p> <p>11 Exhibit French 1382.</p> <p>12 (Deposition Exhibit French 1382</p> <p>13 marked for identification and is annexed hereto.)</p> <p>14 THE WITNESS: Thank you.</p> <p>15 BY MS. FORD:</p> <p>16 Q. For the record, this is ABRX-000118</p> <p>17 through 000159.</p> <p>18 Mr. French, does the first page of --</p> <p>19 of this exhibit appear to be a letter dated March</p> <p>20 7th, 2001, from you to Christian Kendall of</p> <p>21 RxMed?</p> <p>22 A. Yes.</p>

18 (Pages 66 to 69)

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<p style="text-align: right;">Page 70</p> <p>1 Q. Okay. And it says, "Please find 2 enclosed the following: One copy of the new 3 RxMed price list, one copy of the current RxMed 4 membership list, and a list of killed products." 5 Do you see that? 6 A. Yes. 7 Q. And did I read that accurately? 8 A. Yes. 9 Q. Okay. What is meant by a list of 10 killed products? 11 MR. COLE: Can he have a minute just to 12 flip through the document? It's about -- 13 MS. FORD: I'm only asking him about 14 Page 1. 15 If you need a minute to look -- I'm 16 just really asking you what -- if you know what's 17 meant by a list of killed products on item three 18 of your cover letter. 19 MR. COLE: If you need -- if you want 20 to look at it. 21 MS. FORD: But if you want -- if you 22 want him -- him to look at the document --</p>	<p style="text-align: right;">Page 72</p> <p>1 Does this appear to be list of products 2 that are being taken off of RxMed's contract with 3 Abbott? 4 A. Yes. 5 Q. So, it was an existing contract? 6 RxMed had an existing contract at this 7 time? 8 MR. COLE: I'll object to the form. 9 THE WITNESS: Yes. 10 BY MS. FORD: 11 Q. Okay. So, for example, in item one of 12 this letter, it says, a "copy of the new RxMed 13 price list." 14 So, does that lead you to believe there 15 was an old price list? 16 A. Yeah. That's what I was looking on 17 this for, just to make sure, yes. 18 Q. Okay. 19 MR. COLE: If you need time to look at 20 the document, Eric, feel free. 21 THE WITNESS: Okay. 22 MR. COLE: Flip through it.</p>
<p style="text-align: right;">Page 71</p> <p>1 MR. COLE: It's about 30 pages long, 2 the whole document, so -- 3 THE WITNESS: Are we going to talk 4 about the whole document? 5 Are we going through the whole document 6 or -- 7 BY MS. FORD: 8 Q. No. 9 A. My understanding is, these are 10 discontinued products. 11 Q. So, this is a -- RxMed is a continuing 12 account for Abbott; is that right? 13 MR. COLE: Object to the form. 14 THE WITNESS: I don't know. 15 BY MS. FORD: 16 Q. Okay. We've seen some exhibits where 17 we're providing -- we've seen some contracts and 18 some annual pricing information. 19 A. Just clarification real quick: 20 Continuing -- can you just restate the question 21 again? 22 Q. Sure. Sure.</p>	<p style="text-align: right;">Page 73</p> <p>1 BY MS. FORD: 2 Q. And a copy of the current RX membership 3 list, RxMed membership list, excuse me, is what 4 it's referencing in the cover letter? 5 A. Yes. 6 Q. And then the third item was a list of 7 killed products, and I think you've -- 8 summarizing what I think you've told me is that 9 products that are being taken off of the contract 10 between Abbott and RxMed; is that right? 11 A. Yes. 12 Q. Okay. And what do you mean by -- well, 13 that -- that answers the question. 14 Do you recall working with Christian 15 Kendall of RxMed? 16 A. No. 17 Q. After having seen these exhibits, 18 Exhibit French 1378 through Exhibit French 1381, 19 or Exhibit French 1382, does this refresh your 20 recollection about any of the individuals you may 21 have worked with at GeriMed? 22 A. No.</p>

19 (Pages 70 to 73)

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<p style="text-align: right;">Page 74</p> <p>1 Q. How about RxMed?</p> <p>2 A. No.</p> <p>3 Q. Or IVMed?</p> <p>4 A. No.</p> <p>5 Q. Okay. Going back to Exhibit French</p> <p>6 1378 for a minute and the -- if you turn to the</p> <p>7 second page that we were just looking at?</p> <p>8 A. Yes.</p> <p>9 Q. And earlier you testified that this is</p> <p>10 a format that looked familiar to you as one that</p> <p>11 had been used in alternate site contract</p> <p>12 marketing; is that right?</p> <p>13 MR. COLE: Object to the form.</p> <p>14 THE WITNESS: No. I thought I said</p> <p>15 that for this one, and that I wasn't sure if this</p> <p>16 was the standard format that we used in contract</p> <p>17 marketing.</p> <p>18 BY MS. FORD:</p> <p>19 Q. I didn't say "standard." I just said a</p> <p>20 format that was familiar to you.</p> <p>21 MR. COLE: Object to the form.</p> <p>22 I don't think there's a question</p>	<p style="text-align: right;">Page 76</p> <p>1 for example, that you would have developed as a</p> <p>2 contract marketing analyst?</p> <p>3 MR. COLE: Object to the form.</p> <p>4 THE WITNESS: Are you asking me if I</p> <p>5 created the different column headings and</p> <p>6 everything that went into the columns?</p> <p>7 BY MS. FORD:</p> <p>8 Q. Yes.</p> <p>9 A. I don't believe I did that, no.</p> <p>10 Q. Okay. Let me back up.</p> <p>11 When you were in alternate site</p> <p>12 contract marketing, was there a standard format</p> <p>13 for this type of document?</p> <p>14 MR. COLE: Object to the form.</p> <p>15 THE WITNESS: That I don't recall.</p> <p>16 BY MS. FORD:</p> <p>17 Q. You weren't the only contract marketing</p> <p>18 analyst, right?</p> <p>19 A. No.</p> <p>20 Q. Okay. Did all of the contract</p> <p>21 marketing analysts provide pricing to customers</p> <p>22 in the same way?</p>
<p style="text-align: right;">Page 75</p> <p>1 pending.</p> <p>2 THE WITNESS: Okay.</p> <p>3 MS. FORD: Actually, there was.</p> <p>4 MR. COLE: He answered the -- the</p> <p>5 previous question.</p> <p>6 MS. FORD: Okay.</p> <p>7 BY MS. FORD:</p> <p>8 Q. You had testified earlier that this was</p> <p>9 a format that looked familiar to you as having --</p> <p>10 when you worked in alternate site contract</p> <p>11 marketing; is that right?</p> <p>12 MR. COLE: Object to the form.</p> <p>13 THE WITNESS: I've seen something like</p> <p>14 this before.</p> <p>15 BY MS. FORD:</p> <p>16 Q. Okay. Do you believe that you created</p> <p>17 this format?</p> <p>18 A. Based upon my signature being on the</p> <p>19 first page, yes.</p> <p>20 Q. Okay. And other than just actually</p> <p>21 having created this document, do you think this</p> <p>22 is a format that -- format for the spreadsheet,</p>	<p style="text-align: right;">Page 77</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And was that through a standard</p> <p>3 form?</p> <p>4 MR. COLE: I'll object to the form.</p> <p>5 BY MS. FORD:</p> <p>6 Q. Did you use a standard format to -- to</p> <p>7 convey pricing information to customers when you</p> <p>8 were in contract marketing?</p> <p>9 A. I believe so.</p> <p>10 Q. Okay. And who created that form?</p> <p>11 A. That I don't know.</p> <p>12 Q. Okay. But was it, to the best of your</p> <p>13 understanding, or your recollection, was it a</p> <p>14 form that was given to you when you joined</p> <p>15 alternate site contract marketing and someone</p> <p>16 said --</p> <p>17 A. Yes.</p> <p>18 Q. -- this is -- "This is how we do it"?</p> <p>19 A. Yes. When I came into the department,</p> <p>20 the standards were already set.</p> <p>21 Q. Okay.</p> <p>22 A. I did not create documents on my own.</p>

20 (Pages 74 to 77)

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<p style="text-align: right;">Page 78</p> <p>1 Q. Well, you -- you created some -- I</p> <p>2 mean, you created documents on your own.</p> <p>3 For example, you created cover letters,</p> <p>4 like the cover letter to --</p> <p>5 A. Well, no. I'm -- let me -- let me</p> <p>6 clarify.</p> <p>7 As far as what we were talking about</p> <p>8 earlier, you know, the different column headings</p> <p>9 and what should be on there --</p> <p>10 Q. Uh-huh.</p> <p>11 A. -- that's what I -- I meant. I didn't</p> <p>12 create column headings or things like --</p> <p>13 Q. Okay.</p> <p>14 A. -- that.</p> <p>15 But did I do cover letters like this?</p> <p>16 Yeah, I -- well, I -- I wrote cover letters.</p> <p>17 Q. Sure.</p> <p>18 And -- and you would have created</p> <p>19 documents -- but if I'm understanding you</p> <p>20 correctly, you wouldn't have created the form or</p> <p>21 the format, but you would have created documents</p> <p>22 based -- using that form or format.</p>	<p style="text-align: right;">Page 80</p> <p>1 as Exhibit French 1383.</p> <p>2 (Deposition Exhibit French 1383</p> <p>3 was marked for identification and is annexed</p> <p>4 hereto.)</p> <p>5 THE WITNESS: Thank you.</p> <p>6 BY MS. FORD:</p> <p>7 Q. On page -- for the -- for the record --</p> <p>8 A. Yes.</p> <p>9 Q. -- this is ABGM-00065 through -- sorry</p> <p>10 about that -- through 00095.</p> <p>11 Mr. French, does this appear to be a</p> <p>12 July 8th, 1999 letter from Scott Moore to Susan</p> <p>13 Rhodus?</p> <p>14 A. Yes.</p> <p>15 MR. COLE: I'm going to ask again,</p> <p>16 Becky, if he could just have a few minutes to</p> <p>17 read through the document. It's about 30 pages</p> <p>18 long.</p> <p>19 BY MS. FORD:</p> <p>20 Q. Mr. French, I'm not going to be asking</p> <p>21 you detailed questions about the document --</p> <p>22 A. Okay.</p>
<p style="text-align: right;">Page 79</p> <p>1 Is that an accurate summary?</p> <p>2 MR. COLE: Object to the form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 MS. FORD: Okay.</p> <p>5 MR. COLE: We've been going about an</p> <p>6 hour and 15 minutes.</p> <p>7 Do you -- is this a good time for a</p> <p>8 break?</p> <p>9 MS. FORD: Maybe in about five minutes?</p> <p>10 MR. COLE: Are you --</p> <p>11 THE WITNESS: That's fine.</p> <p>12 MR. COLE: -- doing okay?</p> <p>13 THE WITNESS: Yeah.</p> <p>14 MR. COLE: Okay.</p> <p>15 BY MS. FORD:</p> <p>16 Q. I'm going to hand you one more exhibit,</p> <p>17 and then --</p> <p>18 A. Okay.</p> <p>19 Q. -- ask you a few questions, and then</p> <p>20 we'll take a break.</p> <p>21 A. Okay.</p> <p>22 Q. I'll ask the court reporter to mark it</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. -- but take all of the time that you</p> <p>2 need to review it.</p> <p>3 A. Okay.</p> <p>4 Okay.</p> <p>5 Q. And if you turn to Page 2 of the</p> <p>6 document, do you see the heading that says, "1995</p> <p>7 Manufacturer Listing of Pharmaceutical Awards</p> <p>8 GeriMed"?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. First of all, let me ask you:</p> <p>11 Did you know Scott Moore?</p> <p>12 A. Yes.</p> <p>13 Q. And was he an alternate site contract</p> <p>14 marketing analyst?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Was he there during the same</p> <p>17 time that you were, or at least some of the time</p> <p>18 period you were in contract marketing?</p> <p>19 A. Some of the time, yes.</p> <p>20 Q. Did you understand Mr. Moore to have</p> <p>21 responsibility for the GeriMed account at some</p> <p>22 point?</p>

21 (Pages 78 to 81)

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<p style="text-align: right;">Page 82</p> <p>1 A. I don't -- I don't recall --</p> <p>2 Q. Okay.</p> <p>3 A. -- what accounts he had.</p> <p>4 Q. Okay. But here you see he's sending a</p> <p>5 letter to Susan Rhodus and attached to the letter</p> <p>6 is a 1995 (sic) manufacturer listing of</p> <p>7 pharmaceutical awards for GeriMed; is that right?</p> <p>8 MR. COLE: Object to the form.</p> <p>9 Did you say 1995, Becky?</p> <p>10 MS. FORD: If I did, I meant to say</p> <p>11 1999.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MS. FORD:</p> <p>14 Q. Okay. And if you would, compare that</p> <p>15 to the exhibit -- Page 2 of the Exhibit French</p> <p>16 1378, which is the 2000 manufacturer listing of</p> <p>17 pharmaceutical awards for GeriMed.</p> <p>18 Do you have those two together?</p> <p>19 A. Yes.</p> <p>20 Q. Does this appear to be the same general</p> <p>21 format of the document?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 84</p> <p>1 BY MS. FORD:</p> <p>2 Q. Okay.</p> <p>3 A. No. I do not.</p> <p>4 MS. FORD: We can go ahead and take a</p> <p>5 break now.</p> <p>6 THE VIDEOGRAPHER: We'll go off the</p> <p>7 record at the conclusion of tape number one at</p> <p>8 10:16 a.m.</p> <p>9 (There was a brief recess.)</p> <p>10 THE VIDEOGRAPHER: Back on the record</p> <p>11 at the beginning of tape number two at 10:32 a.m.</p> <p>12 BY MS. FORD:</p> <p>13 Q. Mr. French, before we broke, we were</p> <p>14 looking at Exhibit French 1378 and Exhibit French</p> <p>15 1383.</p> <p>16 Do you still have those in front of</p> <p>17 you?</p> <p>18 A. Thank you.</p> <p>19 Yes. I do now.</p> <p>20 Q. Okay. And Exhibit French 1378 was a</p> <p>21 pricing spreadsheet that you provided to GeriMed;</p> <p>22 is that right, in June of 2000?</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. So, going -- looking at the columns and</p> <p>2 reading the column headings from left to right,</p> <p>3 generic name, brand name, FDA, NDC number,</p> <p>4 package size, contract price, AWP, dollar dif</p> <p>5 AWP, type, effective date, and pricing end date</p> <p>6 are in both of these documents; is that right?</p> <p>7 A. Yes.</p> <p>8 Q. And this was -- with respect to Exhibit</p> <p>9 French 1383, it also has a column titled</p> <p>10 "contract number"; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So, here we have, in 1999, Mr.</p> <p>13 Moore is providing pricing information to</p> <p>14 GeriMed, which includes the AWP and the dollar</p> <p>15 difference AWP, similar to what you did in 2000;</p> <p>16 is that right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Do you have any recollection of</p> <p>19 inheriting this format from Mr. Moore?</p> <p>20 MR. COLE: Object to the form.</p> <p>21 THE WITNESS: I don't remember</p> <p>22 specifically receiving this form from Scott.</p>	<p style="text-align: right;">Page 85</p> <p>1 A. According to the cover letter, yes.</p> <p>2 Q. Okay. And Exhibit French 1383 is a</p> <p>3 similar spreadsheet that Mr. Moore provided to</p> <p>4 GeriMed in July of 1999; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. I'm going to hand you now what I'll ask</p> <p>7 the court reporter to mark as Exhibit French</p> <p>8 1384.</p> <p>9 (Deposition Exhibit French 1384</p> <p>10 marked for identification and is annexed</p> <p>11 hereto.)</p> <p>12 BY MS. FORD:</p> <p>13 Q. And for the record, this is ABRX-0089</p> <p>14 through ABRX-000117.</p> <p>15 I'm afraid I may have read those</p> <p>16 numbers wrong. ABRX-000089 through 000117.</p> <p>17 Mr. French, does this appear to be a</p> <p>18 January 26th letter from Scott Moore to RxMed?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. If you could turn to Page 2 of</p> <p>21 the exhibit.</p> <p>22 Do you see at the top it says, "2000</p>

22 (Pages 82 to 85)

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<p style="text-align: right;">Page 86</p> <p>1 Manufacturer Listing of Pharmaceutical Awards 2 RxMed"? 3 A. Yes. 4 Q. Okay. And you see the format of this 5 spreadsheet. 6 Does it appear to be similar to the 7 format of spreadsheets in Exhibit French 1382 and 8 Exhibit French 1378 -- excuse me, Exhibit French 9 1383 and Exhibit French 1378? 10 A. Yes. 11 Q. And again, in the columns we have 12 generic name, brand name, FDA, NDC number, 13 package size, contract price, AWP, dollar 14 difference AWP, type, effective date, pricing end 15 date, and contract number; is that right? 16 A. Yes. 17 Q. Okay. So, you would agree with me, 18 then, that you weren't the first alternate site 19 contract marketing analyst to use this format; is 20 that right? 21 MR. COLE: Object to the form. 22 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 88</p> <p>1 customer; is that right? 2 MR. COLE: Object to the form. 3 THE WITNESS: No. 4 BY MS. FORD: 5 Q. Okay. And you weren't the only analyst 6 to provide AWP information to an Abbott customer; 7 is that right? 8 MR. COLE: Object to the form. 9 THE WITNESS: According to these two 10 documents, no, I wasn't. 11 BY MS. FORD: 12 Q. Okay. What does "AWP" stand for? 13 A. My understanding is, average wholesale 14 price. 15 Q. Okay. And what is the average 16 wholesale price? 17 A. That I'm not sure of. 18 Q. Okay. Do you know how AWP is 19 calculated? 20 A. No. 21 Q. Okay. Do you know for what purpose AWP 22 is used?</p>
<p style="text-align: right;">Page 87</p> <p>1 BY MS. FORD: 2 Q. And you weren't the only analyst to use 3 this format; is that right? 4 MR. COLE: Object to the form. 5 THE WITNESS: Can you ask the question 6 again, please? 7 BY MS. FORD: 8 Q. Sure. 9 You weren't the only analyst to use 10 this pricing format; is that right? 11 A. It appears that Scott used that format 12 right there, too, yes. 13 Q. Okay. And you weren't the -- the first 14 analyst to provide AWP or dollar difference AWP 15 information to an Abbott customer; is that right? 16 MR. COLE: Object to the form. 17 THE WITNESS: Can you repeat it again, 18 please? 19 BY MS. FORD: 20 Q. Sure. 21 You weren't the first analyst to 22 provide the AWP information to an Abbott</p>	<p style="text-align: right;">Page 89</p> <p>1 A. By whom? 2 Q. We'll start with Abbott. 3 A. No. 4 Q. How about contract marketing? 5 A. No. 6 Q. How about Abbott's customers, such as 7 GeriMed? 8 A. No. 9 Q. I would like to turn -- you can put 10 these exhibits away. 11 I'm going to turn -- 12 A. Okay. 13 Q. -- now to training. 14 And I wanted to ask you if you received 15 any training when you joined the alternate site 16 contract marketing department. 17 A. Yes. 18 Q. And did you receive formal training? 19 A. By "formal" you mean? 20 Q. I'm trying to understand whether it 21 was, you know, a formal training program versus 22 hands-on training.</p>

23 (Pages 86 to 89)

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<p>1 A. It was hands-on.</p> <p>2 Q. Okay. And who provided that training?</p> <p>3 A. My manager, Lynn Leone.</p> <p>4 Q. Okay.</p> <p>5 A. And then I would work with the</p> <p>6 different contract marketing analysts that were</p> <p>7 presently there.</p> <p>8 Q. Okay. Do you recall any classroom-</p> <p>9 style training?</p> <p>10 A. No.</p> <p>11 Q. Okay. Do you recall receiving any</p> <p>12 manuals when you joined alternate site contract</p> <p>13 marketing?</p> <p>14 A. I don't recall any manuals.</p> <p>15 Q. Okay. So, other than the hands-on type</p> <p>16 of training that was provided by Ms. Leone or the</p> <p>17 other analysts, do you recall any written</p> <p>18 information that instructed you how to do your</p> <p>19 job?</p> <p>20 A. I don't recall anything. I'm not</p> <p>21 saying that there wasn't. I just don't recall</p> <p>22 specifically what I was given.</p>	<p>1 A. No.</p> <p>2 Q. Do you recall ever receiving a document</p> <p>3 such as a Contract Marketing Basic Operating</p> <p>4 Procedure Manual?</p> <p>5 A. I don't recall receiving it, no.</p> <p>6 Q. Okay.</p> <p>7 MR. COLE: You can take the rubber band</p> <p>8 off if you want.</p> <p>9 THE WITNESS: Okay.</p> <p>10 BY MS. FORD:</p> <p>11 Q. Whether or not it was called a Contract</p> <p>12 Marketing Basic Operating Procedure Manual, does</p> <p>13 this refresh your recollection about receiving</p> <p>14 any written materials about how to do your job?</p> <p>15 A. Can I look at it for a second?</p> <p>16 Q. You certainly can.</p> <p>17 A. No, I don't recall this manual.</p> <p>18 Q. Okay. If you could turn to Page 215 of</p> <p>19 the document.</p> <p>20 The first paragraph there says, "New</p> <p>21 Contract Marketing -- the first paragraph says,</p> <p>22 "New Contract Marketing Analysts need to absorb a</p>
Page 91	Page 93
<p>1 Q. Okay. I'm going to hand you what has</p> <p>2 been previously marked as Plaintiff's Exhibit 1321</p> <p>3 in a prior deposition. And I'll give it first to</p> <p>4 your counsel because I only have one copy.</p> <p>5 MR. COLE: Is this the whole thing,</p> <p>6 Becky?</p> <p>7 MS. FORD: This is the entire exhibit</p> <p>8 that was --</p> <p>9 MR. COLE: Okay.</p> <p>10 MS. FORD: -- introduced in the</p> <p>11 Burchieri deposition.</p> <p>12 MR. COLE: Okay.</p> <p>13 MS. FORD: I will note that this</p> <p>14 contract marketing -- this exhibit has redacted</p> <p>15 pages that were provided to the United States in</p> <p>16 redacted form, in which we've asked for</p> <p>17 unredacted copies, but this is what we've</p> <p>18 received to date.</p> <p>19 MR. COLE: Okay.</p> <p>20 BY MS. FORD:</p> <p>21 Q. Mr. French, do you recognize this</p> <p>22 document?</p>	<p>1 considerable amount of information and develop a</p> <p>2 strong analytical skill-set quickly. While some</p> <p>3 formal training is provided, it is the</p> <p>4 responsibility of the new Analyst to insure that</p> <p>5 they reach the level of competence needed to</p> <p>6 bring themselves up to speed."</p> <p>7 Did I read that accurately?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And then at the bottom of the</p> <p>10 second paragraph, the last sentence says, "The</p> <p>11 New Analyst Training Manual is a training</p> <p>12 outline" --</p> <p>13 A. I'm sorry. Where are you at?</p> <p>14 Q. The second paragraph.</p> <p>15 A. Okay.</p> <p>16 Q. Last sentence.</p> <p>17 "The New Analyst Training Manual is a</p> <p>18 training outline for this portion of the training</p> <p>19 process."</p> <p>20 Did I read that accurately?</p> <p>21 A. Yes.</p> <p>22 Q. Do you recall receiving a New Analyst</p>

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<p style="text-align: right;">Page 94</p> <p>1 Training MANUAL?</p> <p>2 A. No.</p> <p>3 Q. Okay.</p> <p>4 A. I don't.</p> <p>5 Q. Okay. Does this -- reviewing this</p> <p>6 refresh your recollection in any way about the</p> <p>7 training that you may have received in alternate</p> <p>8 site contract marketing?</p> <p>9 A. No.</p> <p>10 Q. Okay. If you could turn now to Page</p> <p>11 100 of the document.</p> <p>12 A. Can I -- can I point something out to</p> <p>13 you or --</p> <p>14 MR. COLE: If you want to -- we can</p> <p>15 take a break and -- and we can talk if you want,</p> <p>16 or if -- if -- if you think it affects an earlier</p> <p>17 answer, then you can --</p> <p>18 THE WITNESS: No. No.</p> <p>19 MR. COLE: -- supplement your answer.</p> <p>20 THE WITNESS: No. No. It's not --</p> <p>21 it's not that. I'm --</p> <p>22 MR. COLE: Do you want to take a break?</p>	<p style="text-align: right;">Page 96</p> <p>1 thought when you handed it to me, it was one</p> <p>2 manual put together at one time, and it's like --</p> <p>3 it's different -- it was put together at</p> <p>4 different times.</p> <p>5 Q. Sure.</p> <p>6 A. And so, I was just kind of a little bit</p> <p>7 confused, and that's why.</p> <p>8 Q. That's understandable.</p> <p>9 And --</p> <p>10 A. Okay. Sorry about that.</p> <p>11 Q. No. That's a -- that's a -- a good</p> <p>12 point.</p> <p>13 And my understanding, this was provided</p> <p>14 to the United States as one document labeled "The</p> <p>15 Contract Marketing Basic Operating Procedures</p> <p>16 Manual," and it does appear that there are</p> <p>17 inserts in this document from different dates, so</p> <p>18 --</p> <p>19 A. Yeah. And I don't recall seeing it, so</p> <p>20 --</p> <p>21 Q. Okay. And are you on Page 100?</p> <p>22 A. I thought we were on 115. I'm sorry.</p>
<p style="text-align: right;">Page 95</p> <p>1 THE WITNESS: Yeah. Just for -- just</p> <p>2 for a second.</p> <p>3 MR. COLE: Okay.</p> <p>4 Is that okay with you?</p> <p>5 MS. FORD: That's fine.</p> <p>6 THE VIDEOGRAPHER: We'll go off the</p> <p>7 record at 10:43 a.m.</p> <p>8 (There was a brief recess.)</p> <p>9 THE VIDEOGRAPHER: We are back on the</p> <p>10 record at 10:45 a.m.</p> <p>11 BY MS. FORD:</p> <p>12 Q. You had asked to take a break.</p> <p>13 Did you have a question or something</p> <p>14 you needed to point out about the document?</p> <p>15 A. Just a clarification. That's all.</p> <p>16 Q. Okay. Anything that you want to put on</p> <p>17 the record?</p> <p>18 A. Well, the -- I was just a little</p> <p>19 confused because the dates of each page were</p> <p>20 different.</p> <p>21 Q. Okay.</p> <p>22 A. And that just kind of threw me off. I</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. That's okay.</p> <p>2 A. Yes. I'm on Page 100.</p> <p>3 Q. Okay. And the heading at the top of</p> <p>4 that page says "Deals"; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And the first sentence says,</p> <p>7 "Deals are an important part of Abbott's everyday</p> <p>8 life. We commonly use them to introduce products</p> <p>9 and to increase sales among slow moving</p> <p>10 products."</p> <p>11 Did I read that accurately?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Is that consistent with your</p> <p>14 recollection of the operation of alternate site</p> <p>15 contract marketing, that you provided deals to</p> <p>16 customers?</p> <p>17 A. No.</p> <p>18 Q. No? Okay.</p> <p>19 A. No.</p> <p>20 Q. If you read further down, it says,</p> <p>21 "They are also used to assist the field</p> <p>22 organization at the end of campaigns and as a way</p>

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<p style="text-align: right;">Page 98</p> <p>1 to effect temporary price reductions at 2 individual accounts. National or regional deals 3 are set up by marketing managers, while account 4 specific deals are set up by analysts." 5 Did I read that accurately? 6 A. Yes, you did. 7 Q. Okay. Do you recall, during the time 8 that you were in contract marketing, any national 9 deals set up by the marketing department? 10 A. No. 11 Q. Okay. Do you recall, as a contract 12 analyst, working on -- on any account specific 13 deals for customers? 14 A. Yes. 15 Q. Okay. And what types of deals were 16 those? 17 A. Pumps. 18 Q. Okay. 19 A. Well, I'm sorry. Infusion pumps. 20 Q. And how would -- how would -- how would 21 a deal be different from your -- your normal just 22 pricing activities?</p>	<p style="text-align: right;">Page 100</p> <p>1 "I want to buy 20 pumps. Can we negotiate a 2 price?" And in my -- my terminology, that's a 3 deal, where we're negotiating a price for the 4 pumps, because they want a larger than normal 5 amount. 6 Someone buys two or three, that's one 7 thing. Someone buys 20, that's something 8 different. So, we would have to negotiate the 9 amount for those pumps. 10 So, my terminology, that's what I think 11 you asked about deals. 12 Q. Okay. 13 A. As far as this right here, I'm not sure 14 what they're speaking to. 15 Q. Okay. When negotiating with a 16 customer, for example, to use your example, over 17 the purchase of 20 pumps -- 18 A. Yes. 19 Q. -- did you have any -- anything you 20 could offer the customer other than better 21 pricing? 22 MR. COLE: Object to the form.</p>
<p style="text-align: right;">Page 99</p> <p>1 A. I'm not sure I understand the question. 2 Q. Okay. For example, did you ever 3 discount pumps in order to get a large account? 4 A. By "discount" you mean? 5 Q. Provide special pricing to the 6 customer. 7 A. Yes. 8 Q. Okay. Did you have any other kind of 9 deals? 10 I'm trying to understand the 11 terminology being used in the manual here and how 12 that was applied in alternate site contract 13 marketing, that deals were an important part of 14 everyday life. 15 MR. COLE: I'll object to the form. 16 THE WITNESS: To be perfectly honest, 17 I'm not sure about what this is speaking to on 18 this page. 19 BY MS. FORD: 20 Q. Okay. 21 A. But as far as what I did in contract 22 marketing, a customer would come to you and say,</p>	<p style="text-align: right;">Page 101</p> <p>1 THE WITNESS: No. 2 BY MS. FORD: 3 Q. So, for example, could you offer them 4 free goods? By 20 pumps, we'll give you two free, 5 for example. 6 MR. COLE: Object to the form. 7 THE WITNESS: No. 8 BY MS. FORD: 9 Q. Okay. Could you offer them rebates? 10 If they purchased a certain amount of product -- 11 A. What do you mean by "rebates"? I'm 12 sorry. 13 Q. Okay. Did you ever use rebates when 14 you were a contract marketing analyst? 15 A. By -- by "rebates" you mean -- I just 16 want to make sure I answer your question -- 17 Q. Sure. 18 A. -- correctly. 19 They buy something, and we give them 20 something back? 21 Q. Yes. 22 A. No.</p>

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<p style="text-align: right;">Page 102</p> <p>1 Q. Okay. So, are you familiar with</p> <p>2 providing pricing structure where if the customer</p> <p>3 purchases "X" amount of product, any sales over</p> <p>4 "X," the customer would be eligible for a rebate?</p> <p>5 A. No.</p> <p>6 Q. Okay. If you could turn to Page 176</p> <p>7 now.</p> <p>8 And the first paragraph says, "Many</p> <p>9 proposals included provision for" initial -- an -</p> <p>10 - excuse me, "an initial expense such as</p> <p>11 conversion allowance. Occasionally, these</p> <p>12 expenses exceed 50 thousand or even 100 thousand</p> <p>13 dollars. We must plan for expenses of this</p> <p>14 magnitude."</p> <p>15 Did I read that accurately?</p> <p>16 A. Yes.</p> <p>17 Q. Then first let me ask you: Were you --</p> <p>18 did you work on any accounts in which a</p> <p>19 conversion allowance was provided to a customer?</p> <p>20 A. I don't recall a specific account, but</p> <p>21 it's possible, yes.</p> <p>22 Q. Okay. Whether or not you can recall</p>	<p style="text-align: right;">Page 104</p> <p>1 A. Yes. I thought you were asking me, do</p> <p>2 I remember a specific incident. But conversion</p> <p>3 allowances, yes.</p> <p>4 Q. Okay. And how did a conversion</p> <p>5 allowance work?</p> <p>6 A. Essentially, if a customer was using my</p> <p>7 competitor's product and they wanted to start</p> <p>8 using our product, they were going to have to</p> <p>9 convert over to our system. And there may be</p> <p>10 instances where some things weren't compatible.</p> <p>11 You know, it wasn't A to A. Maybe they had two</p> <p>12 white sides on their tubing, and maybe we had</p> <p>13 three. And so, there was cost incurred by that</p> <p>14 customer to transition over to us.</p> <p>15 And that's what the conversion</p> <p>16 allowance would speak to. That's what I remember</p> <p>17 it being.</p> <p>18 Q. Okay. And on a new contract, say a</p> <p>19 contract that you were taking the business away</p> <p>20 from a competitor, and a conversion allowance was</p> <p>21 being offered, would that conversion allowance be</p> <p>22 considered part of the deal?</p>
<p style="text-align: right;">Page 103</p> <p>1 the specific account today, do you -- do you have</p> <p>2 a recollection of using a conversion allowance</p> <p>3 any time, either as an infusion system specialist</p> <p>4 or as a contract marketing analyst, in providing</p> <p>5 a conversion allowance to an Abbott customer?</p> <p>6 A. No, I don't remember any specific</p> <p>7 incident of doing that. No.</p> <p>8 Q. Do you -- do you recall that conversion</p> <p>9 allowances -- excuse me -- that a conversion</p> <p>10 allowance was one tool that you had to use in --</p> <p>11 in working with your accounts?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 A. Yes.</p> <p>15 Q. And do you recall hearing that --</p> <p>16 whether or not you recall a specific situation,</p> <p>17 whether -- excuse me -- whether or not you recall</p> <p>18 a specific situation, do you recall Abbott</p> <p>19 employees providing conversion allowances for</p> <p>20 their --</p> <p>21 A. Yes.</p> <p>22 Q. -- for their contracts?</p>	<p style="text-align: right;">Page 105</p> <p>1 MR. COLE: Object to the form.</p> <p>2 THE WITNESS: Going back to the word --</p> <p>3 would it be part of the negotiations? Yes, it</p> <p>4 probably would be.</p> <p>5 BY MS. FORD:</p> <p>6 Q. Okay. And what form did a conversion</p> <p>7 allowance usually take?</p> <p>8 Was it a monetary award?</p> <p>9 MR. COLE: Object to the form.</p> <p>10 THE WITNESS: I don't recall --</p> <p>11 BY MS. FORD:</p> <p>12 Q. Okay.</p> <p>13 A. -- to be honest.</p> <p>14 Q. I guess what are the range of</p> <p>15 possibilities?</p> <p>16 Could it have been money?</p> <p>17 MR. COLE: Object to the form.</p> <p>18 THE WITNESS: I don't recall.</p> <p>19 BY MS. FORD:</p> <p>20 Q. Okay.</p> <p>21 A. And I don't recall if there was a</p> <p>22 standard of how that was done. I don't remember</p>

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<p style="text-align: right;">Page 106</p> <p>1 that.</p> <p>2 Q. Looking back at the manual, the second</p> <p>3 sentence on the page says, "Occasionally, these</p> <p>4 expenses exceed 50 thousand or even 100 thousand</p> <p>5 dollars."</p> <p>6 A. Where we at? Okay.</p> <p>7 Q. Yeah.</p> <p>8 "Occasionally, these expenses exceed 50</p> <p>9 thousand or even 100 thousand dollars. We must</p> <p>10 plan for expenses of this magnitude."</p> <p>11 Did I read that accurately?</p> <p>12 A. Yes, you did.</p> <p>13 Q. Okay. Does that seem to suggest that</p> <p>14 it could have been a monetary award to the</p> <p>15 customer to assist them with the conversion?</p> <p>16 MR. COLE: Object to the form.</p> <p>17 THE WITNESS: I don't know, and the</p> <p>18 reason I don't know, this says these expenses</p> <p>19 exceed 50,000 or even 100 thousand. That</p> <p>20 conversion allowance, that expense, is more than</p> <p>21 the size of most of the customers in alternate</p> <p>22 site. So, to me, looking at this, this pertains</p>	<p style="text-align: right;">Page 108</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And what is your understanding</p> <p>3 of a rebate?</p> <p>4 A. When looking at this, because it's tied</p> <p>5 to our management fee, this is dealing with a</p> <p>6 buying group, and it would deal with the volume</p> <p>7 that they purchase.</p> <p>8 And that's what the rebate dividend and</p> <p>9 management fee are speaking to.</p> <p>10 Q. Okay. So, for example -- and when you</p> <p>11 say "buying group," is that similar to or the</p> <p>12 same as a group purchasing organization?</p> <p>13 Have you heard that terminology?</p> <p>14 A. Yes. Yes.</p> <p>15 Q. So, buying group and G.P.O., are they</p> <p>16 one in the same?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So, you had -- you just</p> <p>19 mentioned volume with respect to a buying group;</p> <p>20 is that right?</p> <p>21 A. Yes.</p> <p>22 Q. So, if a buying group reached a certain</p>
<p style="text-align: right;">Page 107</p> <p>1 to hospital products and not alternate site. So,</p> <p>2 I can't really speak to that.</p> <p>3 That's -- that's a pretty large amount</p> <p>4 of money, so --</p> <p>5 BY MS. FORD:</p> <p>6 Q. Okay.</p> <p>7 A. -- I don't think that pertains to</p> <p>8 alternate site.</p> <p>9 Q. But alternate site is part of the</p> <p>10 hospital products division; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. The second paragraph on the page</p> <p>13 says, "Once a proposal has become a contract</p> <p>14 there may be expenses such as a rebate, dividend,</p> <p>15 or management fee. Here too, it is extremely</p> <p>16 important that we plan and communicate</p> <p>17 appropriately."</p> <p>18 Did I read that accurately?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Does this refresh your</p> <p>21 recollection about the use of rebates, dividends,</p> <p>22 or management fees in contract marketing?</p>	<p style="text-align: right;">Page 109</p> <p>1 volume, would they be eligible for a rebate or a</p> <p>2 dividend?</p> <p>3 MR. COLE: Object to the form.</p> <p>4 THE WITNESS: Not -- not everyone.</p> <p>5 BY MS. FORD:</p> <p>6 Q. Okay.</p> <p>7 A. I can't say across the board that</p> <p>8 everybody who hits a certain volume, because my</p> <p>9 understanding of what was happening at the time</p> <p>10 was, their -- everybody had their own agreement.</p> <p>11 It wasn't like everyone had -- everyone gets a</p> <p>12 management fee, everyone gets that. I don't</p> <p>13 think that was the case at the time.</p> <p>14 So, I would have to answer no to the</p> <p>15 question you asked.</p> <p>16 Q. Okay. You had connected, in your</p> <p>17 answer a few minutes ago, volume with the idea of</p> <p>18 rebates, dividends, and management fees, and I'm</p> <p>19 just -- I'm just trying to understand --</p> <p>20 A. Yeah.</p> <p>21 Q. -- when a customer might get a rebate.</p> <p>22 In what situation would a customer be</p>

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<p style="text-align: right;">Page 110</p> <p>1 eligible for a rebate from Abbott?</p> <p>2 A. A customer and Abbott would negotiate</p> <p>3 that in their agreement, or a customer would ask</p> <p>4 for it when coming to us to get our products.</p> <p>5 So, that would be the situation.</p> <p>6 Q. Okay. And you had associated those, in</p> <p>7 your earlier answer, with volume, and I -- I'm</p> <p>8 just trying to understand the relationship --</p> <p>9 A. Uh-huh.</p> <p>10 Q. -- between the volume and the rebate.</p> <p>11 So, if a customer had negotiated for a</p> <p>12 rebate, would that be based upon achieving some</p> <p>13 particular volume of purchases?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And would that be also true for</p> <p>16 dividends?</p> <p>17 A. Now, that I don't know.</p> <p>18 Q. Okay.</p> <p>19 A. That I don't know.</p> <p>20 Q. Do you have an understanding of how</p> <p>21 dividends were used in contract marketing?</p> <p>22 A. No.</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. Okay.</p> <p>2 A. I don't know -- I don't know what they</p> <p>3 did with their management fee.</p> <p>4 Q. Okay.</p> <p>5 A. So, I can't answer that.</p> <p>6 Q. Did the buying group actually purchase</p> <p>7 product from Abbott?</p> <p>8 MR. COLE: Object to the form.</p> <p>9 THE WITNESS: Are you asking me, did --</p> <p>10 can you --</p> <p>11 BY MS. FORD:</p> <p>12 Q. Sure.</p> <p>13 A. -- restate the question again?</p> <p>14 Q. You had testified earlier, I believe,</p> <p>15 that in --</p> <p>16 A. Uh-huh.</p> <p>17 Q. -- contract marketing, some of the</p> <p>18 accounts you were responsible for were buying</p> <p>19 groups; is that right?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Okay. And maybe we should start more</p> <p>22 simply: What is a buying group?</p>
<p style="text-align: right;">Page 111</p> <p>1 Q. Okay. And how about management fees?</p> <p>2 A. Management fees were set in the</p> <p>3 agreement during the negotiation. If I remember</p> <p>4 correctly, it was either two or three percent of</p> <p>5 the usage.</p> <p>6 Q. And who would the management fee be</p> <p>7 paid to?</p> <p>8 A. If I understand correctly -- well, if I</p> <p>9 remember correctly, to the buying group.</p> <p>10 Q. Okay. So, Abbott would pay the buying</p> <p>11 group or the group purchasing organization --</p> <p>12 A. Yes.</p> <p>13 Q. -- a management fee; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. And --</p> <p>16 A. They would request it.</p> <p>17 Q. Okay. And was that for the buying</p> <p>18 group's -- the services the buying group provided</p> <p>19 to its members, such as negotiating the contract?</p> <p>20 MR. COLE: Object to the form.</p> <p>21 THE WITNESS: Now, that I don't know.</p> <p>22 BY MS. FORD:</p>	<p style="text-align: right;">Page 113</p> <p>1 A. Like I said before, it's just a -- my</p> <p>2 definition, collection of individuals that come</p> <p>3 together and just use their combined purchasing</p> <p>4 power to negotiate with a company.</p> <p>5 The reason I was a little bit confused,</p> <p>6 on the previous question, you asked me, did the</p> <p>7 buying groups purchase from Abbott? Yeah, that's</p> <p>8 pretty much how they work.</p> <p>9 Q. Okay.</p> <p>10 A. And I wasn't sure if you meant, did the</p> <p>11 management portion of it or did the members</p> <p>12 purchase from Abbott.</p> <p>13 Q. Okay.</p> <p>14 A. Because the members did.</p> <p>15 Q. The members of the buying group?</p> <p>16 A. Yes.</p> <p>17 Q. Right.</p> <p>18 A. Yes, they did.</p> <p>19 Q. Okay. And the buying group was a</p> <p>20 collection of members; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And they -- were they</p>

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1 individuals, or were they -- were they companies?
 2 A. The buying group or the --
 3 Q. The members.
 4 A. They did not own each other, if that's
 5 what you're asking me. They were individual --
 6 Q. You described them as individuals who
 7 come together, and I'm trying to determine
 8 whether they're individuals like you and I or
 9 whether they're individual companies.
 10 A. No. Like a home infusion company.
 11 Q. Okay.
 12 A. Like Greg's home infusion in
 13 Louisville, Mike's home infusion in Louisville,
 14 and Steve's home infusion in Louisville, they
 15 don't share ownership of one another, but they
 16 belong to the same buying group.
 17 Q. And the buying group has some
 18 management, or it's a company in and of itself,
 19 or has some management, that negotiates with
 20 Abbott and other --
 21 A. Yes.
 22 Q. -- pharmaceutical manufacturers?

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1 A. My understanding is that the, quote,
 2 unquote, "buying group" acts as one voice on
 3 behalf of all of these independent members, and
 4 they go to Abbott and say, "Hey, we have a
 5 thousand members, and what we would like to do is
 6 negotiate product pricing with you, and we
 7 receive a management fee for doing this
 8 negotiation."
 9 Q. Okay.
 10 A. That's my understanding of it.
 11 Q. Okay. So, the management fee would not
 12 be a fee that went to the members of the buying
 13 group, it would go to the management of the
 14 buying group?
 15 MR. COLE: Object to the form.
 16 THE WITNESS: That depends on the
 17 groups.
 18 BY MS. FORD:
 19 Q. Okay.
 20 A. Some groups may, some groups may not.
 21 So, it just depends on how they want to do it.
 22 Q. Okay. If you could turn to Page 262

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1 now.
 2 And the heading on that page is
 3 "Significant Events Monthly Report"; is that
 4 right?
 5 A. Yes.
 6 Q. And we had looked at Exhibit French
 7 1377 earlier -- I'm sorry, Exhibit French 1376,
 8 and we had -- that was a significant event report
 9 from Jack Miller to Pete Baker.
 10 A. Yes.
 11 Q. Do you remember that? Okay.
 12 And I believe you testified at that
 13 time, when we were talking about Exhibit French
 14 1376, that you also created significant events
 15 reports when you were in alternate site; is that
 16 right?
 17 A. As a sales rep, yes, I did.
 18 Q. Okay. Did you also create them as a
 19 contract marketing analyst?
 20 A. I don't recall, but I'm sure I did.
 21 Q. Okay. What types of -- let's start
 22 first when you were an alternate site sales rep.

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1 A. Yes.
 2 Q. What types of information would you
 3 convey in your monthly significant events report?
 4 A. The status of my largest accounts is
 5 what would typically go in there.
 6 Q. Any other information?
 7 A. No. Really an update on the largest
 8 accounts. Best I can remember, that's it.
 9 Q. Okay. And in Exhibit French 1376, we
 10 saw that Mr. -- we saw in that -- in Exhibit
 11 French 1376, that what had happened in the past
 12 30 days was being reported on and also what was
 13 going to be happening in the next 30 days was
 14 reported on.
 15 Did you see that breakout there, in
 16 Exhibit French 1376?
 17 A. Yes.
 18 MR. COLE: Object to the form.
 19 BY MS. FORD:
 20 Q. Did you include similar information in
 21 your reports, reporting on the past 30 days and
 22 then what was -- what you expected to be

30 (Pages 114 to 117)

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<p style="text-align: right;">Page 118</p> <p>1 happening in the future?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. What types of information would</p> <p>4 you have included in significant events reports</p> <p>5 when you were in contract marketing?</p> <p>6 A. Okay. In contract marketing?</p> <p>7 Q. Yes.</p> <p>8 A. It would be anniversaries that are</p> <p>9 coming up that I need to work on. As we talked</p> <p>10 earlier, you know, most contracts had an</p> <p>11 anniversary date. So, for the current 30 days,</p> <p>12 it's what contracts that I worked on, infusion</p> <p>13 pumps, agreements that I did, and then the next</p> <p>14 30 days are the ones I was planning to work on.</p> <p>15 Q. And you had just mentioned infusion</p> <p>16 pumps, but you actually had a broader</p> <p>17 responsibility than just pumps when you were in</p> <p>18 contract marketing, right?</p> <p>19 A. Right.</p> <p>20 Q. So, would you also include information</p> <p>21 about your buying group contracts?</p> <p>22 A. Yeah. That's what I meant when I said</p>	<p style="text-align: right;">Page 120</p> <p>1 print out all of your significant event reports?</p> <p>2 A. No.</p> <p>3 Q. What happened when you left alternate</p> <p>4 site as a sales rep to become a contract</p> <p>5 marketing analyst?</p> <p>6 What -- did you keep your same</p> <p>7 computer?</p> <p>8 A. No.</p> <p>9 Q. Okay. What did you do with your files</p> <p>10 at that point?</p> <p>11 A. My -- my -- my customer files?</p> <p>12 Q. Uh-huh.</p> <p>13 A. I gave them to the person that replaced</p> <p>14 me.</p> <p>15 Q. Okay. And what about the files that</p> <p>16 you maintained on the computer?</p> <p>17 A. They stayed on the computer.</p> <p>18 Q. And what happened to the computer?</p> <p>19 A. It was a personal computer, and so</p> <p>20 eventually I got rid of it.</p> <p>21 Q. Okay. At any time before getting rid</p> <p>22 of your personal computer -- and I'm assuming you</p>
<p style="text-align: right;">Page 119</p> <p>1 contract anniversaries that were coming up --</p> <p>2 Q. Okay.</p> <p>3 A. -- and things of that nature. So, I</p> <p>4 would include that in the report.</p> <p>5 Q. Okay. Did you maintain copies of the -</p> <p>6 - of the significant events reports that you</p> <p>7 created?</p> <p>8 A. Yes.</p> <p>9 Q. During the time that you were an</p> <p>10 alternate site sales rep, you would provide a</p> <p>11 copy of the significant event report to your</p> <p>12 supervisor; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. Mr. Ramsey?</p> <p>15 A. Yes. Mike Ramsey, yes.</p> <p>16 Q. And was it your practice to also</p> <p>17 maintain a copy of that for yourself?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And where would you maintain</p> <p>20 them?</p> <p>21 A. On the computer.</p> <p>22 Q. Okay. And at any point, did you ever</p>	<p style="text-align: right;">Page 121</p> <p>1 used this personal computer for work?</p> <p>2 A. Yes.</p> <p>3 Q. For your job responsibilities at</p> <p>4 Abbott?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Did you do anything when you got</p> <p>7 rid of your computer to transfer the files off,</p> <p>8 your work-related files?</p> <p>9 A. No.</p> <p>10 Q. So, I guess, when did you get rid of</p> <p>11 your -- the computer that you had during the 1997</p> <p>12 to 2000 time period?</p> <p>13 A. I don't remember the exact date. The</p> <p>14 hardware -- the hard drive --</p> <p>15 Q. Uh-huh.</p> <p>16 A. -- it died on it, so I just tossed it</p> <p>17 out. There was nothing I could do with it.</p> <p>18 Q. Okay. Was it ever your practice,</p> <p>19 during that 1997 to 2000 time period, to maintain</p> <p>20 copies of the information on your computer? A</p> <p>21 backup, for example?</p> <p>22 A. Information that pertained to my</p>

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<p style="text-align: right;">Page 122</p> <p>1 accounts --</p> <p>2 Q. Uh-huh.</p> <p>3 A. -- I would print that off. And I had a</p> <p>4 -- a folder, and everything that pertained to</p> <p>5 them, I put in the folder so I could pass it on</p> <p>6 to the next rep.</p> <p>7 Q. Okay. And what about other types of</p> <p>8 work-related documents that wouldn't necessarily</p> <p>9 be account specific? For example, like the</p> <p>10 significant events reports?</p> <p>11 A. No, I didn't -- I didn't print those</p> <p>12 off. Those are Word documents that just stayed</p> <p>13 on my computer.</p> <p>14 Q. Okay. And did you have an electronic</p> <p>15 backup of all of the information on your</p> <p>16 computer?</p> <p>17 A. No.</p> <p>18 Q. Okay. And so, when your hard drive</p> <p>19 died in -- sometime in 2000, did you get a new</p> <p>20 computer?</p> <p>21 A. I'm not sure it was 2000.</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. Okay. Did you have file cabinets</p> <p>2 there?</p> <p>3 A. Yes.</p> <p>4 Q. What types of documents did you</p> <p>5 maintain related to the accounts you had</p> <p>6 responsibility for?</p> <p>7 A. Each customer would have a file with</p> <p>8 their name on it where all of their documents</p> <p>9 would go into.</p> <p>10 Q. Did you have other types of files other</p> <p>11 than account specific files?</p> <p>12 A. Yes.</p> <p>13 Q. And do you recall what those were?</p> <p>14 A. The ones I recall off the top of my</p> <p>15 head, listings of products, interoffice memos,</p> <p>16 things of that nature, vacation calendar, sick</p> <p>17 days. Just those type of things --</p> <p>18 Q. Okay.</p> <p>19 A. -- that I would keep there.</p> <p>20 Q. Did you maintain a copy of the</p> <p>21 significant events reports that you created when</p> <p>22 you were in contract marketing?</p>
<p style="text-align: right;">Page 123</p> <p>1 A. Yes, I did.</p> <p>2 Q. And is that the computer that you</p> <p>3 maintain today?</p> <p>4 A. No.</p> <p>5 Q. No. Okay.</p> <p>6 Was it, again, a personal computer?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And how long did you have that</p> <p>9 computer?</p> <p>10 A. I don't recall how long I had that.</p> <p>11 So, I don't -- I don't remember.</p> <p>12 Q. Okay. When you worked in alternate</p> <p>13 site contract marketing --</p> <p>14 A. Uh-huh.</p> <p>15 Q. -- where -- where were you based?</p> <p>16 Where were you working from?</p> <p>17 A. In -- when I was in contract marketing?</p> <p>18 Q. Uh-huh.</p> <p>19 A. Abbott Park. Abbott Park, Illinois.</p> <p>20 Q. Okay. And did you have a physical</p> <p>21 office there in Abbott Park?</p> <p>22 A. I had a cubicle.</p>	<p style="text-align: right;">Page 125</p> <p>1 A. On the computer, yes.</p> <p>2 Q. And did you print those out and keep</p> <p>3 those in a file?</p> <p>4 A. No.</p> <p>5 Q. Okay. And at the time that you were</p> <p>6 located, physically located, in Abbott Park, did</p> <p>7 you have an Abbott issued computer?</p> <p>8 A. Yes.</p> <p>9 Q. Was that a desktop computer --</p> <p>10 A. Yes, it was.</p> <p>11 Q. -- or a laptop?</p> <p>12 Desktop?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And when you left alternate site</p> <p>15 contract marketing to go to the pharmaceutical</p> <p>16 products division, did you take that computer</p> <p>17 with you?</p> <p>18 A. No.</p> <p>19 Q. Okay. At the time that you left, did</p> <p>20 you do anything to preserve the computer files on</p> <p>21 the computer you were using in contract</p> <p>22 marketing?</p>

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<p style="text-align: right;">Page 126</p> <p>1 MR. COLE: Object to the form.</p> <p>2 THE WITNESS: What do you mean by</p> <p>3 "preserve" or --</p> <p>4 BY MS. FORD:</p> <p>5 Q. Did you take those files with you,</p> <p>6 those computer files with you?</p> <p>7 A. No.</p> <p>8 Q. Did you save them to a disk or a CD and</p> <p>9 take them with you to your new job?</p> <p>10 A. No.</p> <p>11 Q. Okay. Did you delete them from the</p> <p>12 computer?</p> <p>13 A. No.</p> <p>14 Q. You just left them on the computer?</p> <p>15 A. Yes.</p> <p>16 Q. And the next person who inherited that</p> <p>17 computer got your files?</p> <p>18 A. Yeah. Not my personal files.</p> <p>19 Q. Uh-huh.</p> <p>20 A. But account specific, if there was</p> <p>21 something on the computer, you left that for the</p> <p>22 next person, along with the paper files.</p>	<p style="text-align: right;">Page 128</p> <p>1 A. Uh-huh.</p> <p>2 Q. -- when you were in alternate site</p> <p>3 contract marketing.</p> <p>4 A. Uh-huh.</p> <p>5 Q. In addition to the on-the-job training,</p> <p>6 kind of the hands-on training you got when you</p> <p>7 first started, did you receive any ongoing</p> <p>8 training during that approximately year that you</p> <p>9 were there?</p> <p>10 A. What do you mean "ongoing"?</p> <p>11 Q. Do you ever recall attending any</p> <p>12 seminars that were put on for alternate site</p> <p>13 contract marketing?</p> <p>14 A. I don't remember any seminars, no.</p> <p>15 Q. Okay. Do you recall receiving any</p> <p>16 written training materials?</p> <p>17 A. I don't -- yes.</p> <p>18 Q. And what were the nature of those</p> <p>19 training materials?</p> <p>20 A. I don't know specifically. Just how to</p> <p>21 -- well, correct that.</p> <p>22 What I do remember receiving is how to</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. Okay. And what about documents that</p> <p>2 you created on your computer?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Like significant events reports that</p> <p>5 you didn't print out and put in a --</p> <p>6 A. Now, that --</p> <p>7 Q. -- hard copy file?</p> <p>8 What happened to those files?</p> <p>9 A. Delete it. There's no reason for me to</p> <p>10 keep that part of it.</p> <p>11 Q. Okay. So, you maintained them while</p> <p>12 you were in alternate site contract marketing,</p> <p>13 but then when you left to take a new job, you</p> <p>14 deleted those kind of files if they weren't</p> <p>15 account specific; is that --</p> <p>16 A. Correct.</p> <p>17 Q. Is that what I hear you saying?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 Okay. Going back to the issue of</p> <p>21 training, we've been talking about the training</p> <p>22 that you received --</p>	<p style="text-align: right;">Page 129</p> <p>1 do the Excel spreadsheets, how to actually put</p> <p>2 all of the information into the spreadsheets.</p> <p>3 And there was an actual manual on how to do that.</p> <p>4 Q. And was it a particular type of</p> <p>5 spreadsheet that this manual was addressing?</p> <p>6 A. No. Just Excel spreadsheet.</p> <p>7 Q. Okay. So, kind of like how to create</p> <p>8 an Excel spreadsheet or --</p> <p>9 A. How to create an Excel spreadsheet, and</p> <p>10 given that we're talking 2-, 300 products, just</p> <p>11 how to manage that big of file and how to look at</p> <p>12 all of that data. That's what that manual was</p> <p>13 about.</p> <p>14 Q. Okay. And was that manual more focused</p> <p>15 on the capabilities of Excel, or was it more</p> <p>16 focused on the type of information as a contract</p> <p>17 marketing analyst that you should be including in</p> <p>18 such a spreadsheet?</p> <p>19 A. Excel.</p> <p>20 Q. Okay.</p> <p>21 A. Not the information.</p> <p>22 Q. So, it was kind of an Excel guide; is</p>

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<p style="text-align: right;">Page 130</p> <p>1 that --</p> <p>2 A. It was an Excel guide. Just, for</p> <p>3 instance, at the time I knew how to do this -- if</p> <p>4 you were working with two separate worksheets,</p> <p>5 how to change information on this worksheet and</p> <p>6 have it automatically change on that. That way</p> <p>7 you didn't have to go with 200 products. Go --</p> <p>8 so, that's the type of training I remember,</p> <p>9 because that was most important to the job I was</p> <p>10 doing.</p> <p>11 Q. Okay. Do you know if that written</p> <p>12 material that you got regarding Excel, was that</p> <p>13 generated by Excel? Do you know?</p> <p>14 Do you know if someone in Excel --</p> <p>15 A. Microsoft -- like if Microsoft produced</p> <p>16 that?</p> <p>17 Q. Right.</p> <p>18 A. No.</p> <p>19 Q. You don't know or it wasn't?</p> <p>20 A. Oh, I'm sorry.</p> <p>21 No, I was -- I was taught that by</p> <p>22 another contract marketing analyst.</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. -- about Excel?</p> <p>2 A. About Excel.</p> <p>3 Q. Okay.</p> <p>4 A. Yes.</p> <p>5 Q. Very good.</p> <p>6 Do you recall any other examples of</p> <p>7 written training materials like that that you</p> <p>8 received --</p> <p>9 A. No.</p> <p>10 Q. -- in contract marketing?</p> <p>11 Okay. Now, moving on to when you were</p> <p>12 an infusion system specialist.</p> <p>13 Did you receive any new hire training</p> <p>14 when you first became a sales rep for alternate</p> <p>15 site?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And what was the nature of that</p> <p>18 training?</p> <p>19 A. By "nature" you mean what did we talk</p> <p>20 about, or where was it, or --</p> <p>21 Q. Was it hands-on training, or was it</p> <p>22 formal training?</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. Okay. And so, the written materials --</p> <p>2 I believe you said the written materials; is that</p> <p>3 right?</p> <p>4 A. Yes.</p> <p>5 Q. Was that something that was created by</p> <p>6 Abbott, to the best of your recollection?</p> <p>7 A. No. Not to the best of my</p> <p>8 recollection.</p> <p>9 Q. Okay. So, it was a training guide that</p> <p>10 was produced by Microsoft?</p> <p>11 A. No. What I'm saying is this -- that a</p> <p>12 contract marketing analyst figured out how to</p> <p>13 make our jobs easier with these spreadsheets, and</p> <p>14 they actually took the time -- a little project,</p> <p>15 took the time to type it out, all right, and then</p> <p>16 pass it on to other analysts; this is just how</p> <p>17 you use Excel when you're using large</p> <p>18 spreadsheets.</p> <p>19 So, that's what I mean.</p> <p>20 Q. Okay. So, someone within Abbott</p> <p>21 created this training material --</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 133</p> <p>1 A. It was formal training.</p> <p>2 Q. Okay. And who provided the training?</p> <p>3 A. Alternate -- alternate site product</p> <p>4 sales trainers --</p> <p>5 Q. Okay.</p> <p>6 A. -- provided the training for us.</p> <p>7 Q. Do you recall their names?</p> <p>8 A. Trudy was one. Dave Rots.</p> <p>9 Q. Is the Trudy that you're referring to,</p> <p>10 could that be Trudy Burchieri?</p> <p>11 A. Yes. She was a trainer --</p> <p>12 Q. Okay.</p> <p>13 A. -- in alternate site product sales.</p> <p>14 Q. So, you were provided formal-type</p> <p>15 training from Dave Rots and Trudy Burchieri?</p> <p>16 A. Yeah.</p> <p>17 Q. Okay.</p> <p>18 A. Yes.</p> <p>19 Q. Okay. About how long did that training</p> <p>20 last?</p> <p>21 A. I don't remember how long it was.</p> <p>22 Q. Okay. Was this classroom-style</p>

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<p style="text-align: right;">Page 134</p> <p>1 training?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you recall if we're talking</p> <p>4 about something in the nature of a half a day, or</p> <p>5 was it more like two weeks of training?</p> <p>6 A. More like two weeks of training.</p> <p>7 Q. Okay. Were you the only participant in</p> <p>8 the training, or were there other members in the</p> <p>9 training class?</p> <p>10 A. I believe there was more people in the</p> <p>11 class. I wasn't by myself.</p> <p>12 Q. Okay. Do you recall who those others</p> <p>13 were?</p> <p>14 A. No.</p> <p>15 Q. Okay. To the best of your</p> <p>16 recollection, were the other participants in the</p> <p>17 training also alternate site sales reps?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And were they new to Abbott as</p> <p>20 well?</p> <p>21 A. Yes.</p> <p>22 Q. Or at least new to alternate site?</p>	<p style="text-align: right;">Page 136</p> <p>1 attended the training or started around the same</p> <p>2 time that you did?</p> <p>3 A. No, it doesn't.</p> <p>4 Q. Okay. Physically, where was the</p> <p>5 training held?</p> <p>6 A. Abbott Park. Abbott Park, Illinois.</p> <p>7 Q. Okay. Did you receive any written</p> <p>8 materials during that training?</p> <p>9 A. Yes.</p> <p>10 Q. What kind of -- what kind of materials</p> <p>11 did you receive?</p> <p>12 A. Product information.</p> <p>13 Q. Okay. Were those more of the hand --</p> <p>14 handout variety, or was it more like a manual or</p> <p>15 a module?</p> <p>16 A. More like a module, like in a -- a</p> <p>17 thick binder.</p> <p>18 Q. Okay. And about how many of those did</p> <p>19 you receive?</p> <p>20 A. I don't recall how many there were.</p> <p>21 Q. More than one?</p> <p>22 A. Yes.</p>
<p style="text-align: right;">Page 135</p> <p>1 A. Yes.</p> <p>2 Q. Okay. If you could look at Exhibit</p> <p>3 French 1375.</p> <p>4 A. Are we done with this one so I can move</p> <p>5 it?</p> <p>6 Q. Yes, we are.</p> <p>7 A. Okay.</p> <p>8 Q. In Exhibit French 1375, it says,</p> <p>9 "Selling Abbott Products by Specialties" at the</p> <p>10 top.</p> <p>11 A. Okay.</p> <p>12 Q. And at the bottom half of Page 1 and</p> <p>13 then continuing on to Page 2, we had discussed</p> <p>14 earlier that this was a listing of the alternate</p> <p>15 site sales reps; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Looking at the list here, do you</p> <p>18 -- does -- does this refresh your recollection</p> <p>19 about any of the other participants in the class?</p> <p>20 A. No.</p> <p>21 Q. So, if you read over the names, does it</p> <p>22 refresh your recollection about who else may have</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. Okay. Do you recall there being</p> <p>2 several?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Do you recall how those modules</p> <p>5 were organized?</p> <p>6 A. Yes.</p> <p>7 Q. And how was that?</p> <p>8 A. The one I remember is Ultane, which was</p> <p>9 our biggest product. And basically, it was -- it</p> <p>10 was a binder organized in sections, and it just</p> <p>11 took you from just a -- a basic understanding of</p> <p>12 physiology all the way to how the product is made</p> <p>13 and how it interacts with patients.</p> <p>14 And that's the type of training we were</p> <p>15 receiving so we could go out in the field and</p> <p>16 sell our product.</p> <p>17 Q. Okay. Do you recall a similar module</p> <p>18 relating to Abbott's pumps?</p> <p>19 A. I don't recall a specific module, but -</p> <p>20 -</p> <p>21 Q. Okay.</p> <p>22 A. -- I'm sure we were trained on the</p>

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<p style="text-align: right;">Page 138</p> <p>1 pumps.</p> <p>2 Q. Okay. So, you had mentioned that</p> <p>3 Ultane was one of the products that you can</p> <p>4 remember having a manual or module related to; is</p> <p>5 that right?</p> <p>6 A. Yes.</p> <p>7 Q. But you believe that there were others</p> <p>8 as well?</p> <p>9 A. A pump manual, yes.</p> <p>10 Q. Okay. Any other products that would</p> <p>11 have been covered by a manual?</p> <p>12 A. To answer your question, I -- I don't</p> <p>13 know if it was covered by a manual, but we went</p> <p>14 through the injectable products. Essentially, we</p> <p>15 had a -- a catalog that we sold out of, and</p> <p>16 during training, we covered the products in the</p> <p>17 catalog, but more emphasis was put on Ultane</p> <p>18 because it's a more complex product than a</p> <p>19 butterfly needle, let's say.</p> <p>20 So, we spent more time on Ultane and</p> <p>21 more time on the pumps because we actually had to</p> <p>22 train clinicians how to use the pumps. I just</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. Okay. Did you receive written</p> <p>2 materials related to selling skills?</p> <p>3 A. Yes.</p> <p>4 Q. And what type of materials would they</p> <p>5 have been?</p> <p>6 A. What do you mean?</p> <p>7 Q. Would you have received a handout, or</p> <p>8 would you have received a separate manual or</p> <p>9 module?</p> <p>10 A. It would have been handouts and role</p> <p>11 playing.</p> <p>12 Q. Okay. After you left the training, did</p> <p>13 you keep a copy of those handouts and manuals?</p> <p>14 A. For a time, yes.</p> <p>15 Q. And what eventually happened to them?</p> <p>16 A. I tossed them out.</p> <p>17 Q. Okay. During the training, do you</p> <p>18 remember a discussion about average wholesale</p> <p>19 price?</p> <p>20 A. No. I do not.</p> <p>21 Q. During the new hire training, did you</p> <p>22 receive any training on how contract marketing</p>
<p style="text-align: right;">Page 139</p> <p>1 don't remember the specific binder --</p> <p>2 Q. Sure.</p> <p>3 A. -- for the pumps, but we were trained</p> <p>4 how to do that and how to talk to our customers</p> <p>5 about it.</p> <p>6 Q. And I believe you said that there were</p> <p>7 several modules. You couldn't remember exactly</p> <p>8 how many.</p> <p>9 A. I can't remember how many.</p> <p>10 Q. So -- and I was just trying to</p> <p>11 understand.</p> <p>12 A. Yes.</p> <p>13 Q. You mentioned Ultane was one example of</p> <p>14 a specific module that you could recall, or</p> <p>15 manual that you could recall.</p> <p>16 A. I specifically recall that one, yes.</p> <p>17 Q. But there were others too?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. In addition to learning about</p> <p>20 products during your training, did you have any</p> <p>21 training on -- as a new hire, on selling skills?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 141</p> <p>1 worked?</p> <p>2 A. Yes.</p> <p>3 Q. And who provided that training?</p> <p>4 A. I don't recall.</p> <p>5 Q. Okay. Do you believe it was part of</p> <p>6 the training that you received from Trudy and</p> <p>7 Dave, or was it someone else?</p> <p>8 A. No. During -- during training, they</p> <p>9 bring in the different departments and have</p> <p>10 people do presentations, like we're the marketing</p> <p>11 department, this is what we do.</p> <p>12 Q. Okay.</p> <p>13 A. We're contract marketing, this is what</p> <p>14 we do. We're customer service, you know, we're</p> <p>15 the benefits people. So, all of those people</p> <p>16 came through during training.</p> <p>17 Q. Okay.</p> <p>18 A. But I don't recall who actually did the</p> <p>19 presentations.</p> <p>20 Q. Okay. Do you recall what the focus of</p> <p>21 the contract marketing training was?</p> <p>22 A. No. I do not.</p>

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<p style="text-align: right;">Page 142</p> <p>1 Q. For example, was it training on how to</p> <p>2 work with contract marketing to get a contract</p> <p>3 for your account?</p> <p>4 MR. COLE: Object to the form.</p> <p>5 THE WITNESS: Can you restate the</p> <p>6 question, please?</p> <p>7 BY MS. FORD:</p> <p>8 Q. Sure.</p> <p>9 Were you provided training on how to</p> <p>10 work with alternate site contract marketing to</p> <p>11 get a contract for a new account?</p> <p>12 A. If you mean who do I need to call, what</p> <p>13 -- what format do I need to send information to</p> <p>14 contract marketing, yes.</p> <p>15 Q. And presumably, what information</p> <p>16 contract marketing would need from you about the</p> <p>17 account --</p> <p>18 A. Yes.</p> <p>19 Q. -- is that right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. I'm going to hand you what has</p> <p>22 been previously marked as Exhibit Burchieri 1192.</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. Okay. So, you don't know whether you</p> <p>2 received this during your training about contract</p> <p>3 marketing?</p> <p>4 A. No, I don't.</p> <p>5 Q. Okay. If you turn to Page 2 of the</p> <p>6 document, under -- at the top of the page, it</p> <p>7 says, "Module Goal: To provide the ASPS field</p> <p>8 representative with the tools to probe and</p> <p>9 profile accounts more" efficiently -- or, excuse</p> <p>10 me, "more effectively."</p> <p>11 THE REPORTER: Probe what?</p> <p>12 MS. FORD: Profile accounts more</p> <p>13 effectively.</p> <p>14 BY MS. FORD:</p> <p>15 Q. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Top of the page? Okay.</p> <p>18 A. Yes.</p> <p>19 Q. And then the next heading says,</p> <p>20 "Objectives: Upon completion of this module, the</p> <p>21 representative will be able to:" and it lists</p> <p>22 four stated objectives there.</p>
<p style="text-align: right;">Page 143</p> <p>1 For the record, this is ABT AWP/MDL</p> <p>2 197141 through 197162.</p> <p>3 Mr. French, do you recognize this</p> <p>4 document?</p> <p>5 A. No, I do not.</p> <p>6 Q. Does it appear to be alternate site</p> <p>7 sales training titled, "Abbott Alternate Site</p> <p>8 Product Sales Account Assessment Strategies and</p> <p>9 Contract Marketing Guidelines For A Proposal?"</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And you see listed there, under</p> <p>12 "written by," the first name is Trudy Burchieri;</p> <p>13 is that right?</p> <p>14 A. Yes.</p> <p>15 Q. And she's the -- one of the individuals</p> <p>16 you identified as providing training at -- to you</p> <p>17 when you were newly hired as a sales rep; is that</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. So -- I believe you said you</p> <p>21 didn't recognize this document; is that right?</p> <p>22 A. No, I don't.</p>	<p style="text-align: right;">Page 145</p> <p>1 Do you see that?</p> <p>2 A. No.</p> <p>3 Are you still on Page 2?</p> <p>4 Q. Uh-huh.</p> <p>5 Under "Module Goals," and the next</p> <p>6 heading is "Objectives"?</p> <p>7 MR. COLE: I think you're on Page 3,</p> <p>8 Eric.</p> <p>9 THE WITNESS: Oh, I'm sorry. This said</p> <p>10 "Page 1" at the bottom.</p> <p>11 MS. FORD: Oh, I'm sorry. Speaking of</p> <p>12 Page 2 of the exhibit.</p> <p>13 MR. COLE: Second page of the exhibit.</p> <p>14 THE WITNESS: Okay. I'm sorry. I was</p> <p>15 looking at the page number, so that's why I</p> <p>16 couldn't see it.</p> <p>17 Okay. Yes. I see -- I see what you're</p> <p>18 talking about, yes.</p> <p>19 BY MS. FORD:</p> <p>20 Q. So, the "Objectives"?</p> <p>21 A. Yes.</p> <p>22 Q. And it says, "Upon completion of this</p>

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<p style="text-align: right;">Page 146</p> <p>1 module, the representative will be able to:" and 2 it lists four stated objectives; is that right? 3 A. Yes. 4 Q. Okay. And the fourth one says, 5 "Describe the information needed by contract 6 marketing when putting in a request for proposal 7 (RFP)"; is that right? 8 A. Yes. 9 Q. Okay. Were you ever involved in 10 creating guidelines such as this when you were in 11 contract marketing? 12 A. I don't recall any. 13 Q. Okay. Do you recall seeing any written 14 guidance to the field sales force when you were 15 in contract marketing about the types of 16 information you, as an analyst, would need? 17 A. Yes. 18 Q. Okay. And what type of -- was it 19 written guidance? 20 A. Yes. 21 Q. And in what form was it? Was it a 22 memo?</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. Okay. 2 A. So, periodically, we would send out 3 reminders to the field, when submitting a request 4 for a pump proposal, we need this specific 5 information, so please do that for us so we won't 6 delay in getting your contract out. 7 Q. Okay. 8 A. That's what I was thinking about when 9 you were asking me the question. 10 Q. Do you recall any similar 11 correspondence going out to the field about the 12 types of information that contract marketing 13 would need in responding to an RFP? 14 A. Well, if it's a -- a pump proposal, 15 that's what I was talking about just now. 16 Q. Okay. 17 A. I just want to make sure I'm 18 understanding what you're asking. 19 Q. When I said "RFP" earlier, you seemed 20 to distinguish, so I just am asking the question 21 again a little bit differently. 22 A. Are you -- well, let me ask you this:</p>
<p style="text-align: right;">Page 147</p> <p>1 A. Yes. 2 Q. Okay. Do you recall who the memo was 3 from? 4 A. No. 5 Q. Okay. 6 A. I can't say specifically, no. 7 Q. Okay. To the best of your 8 recollection, was it a memo that was created by 9 someone within alternate site contract marketing 10 and sent to the field sales reps? 11 A. Yes. 12 Q. And what types of information did it 13 convey that -- that alternate site needed from 14 the sales reps in responding to an RFP? 15 A. Well, that's -- that's different. Not 16 the RFP part. You asked me about, did we send 17 correspondence out to the field. And what I was 18 thinking was, we would send correspondence out, 19 you know, contracts are delayed because of 20 missing information, because people would send in 21 a request, but they wouldn't have all of the 22 pertinent information that we would look for.</p>	<p style="text-align: right;">Page 149</p> <p>1 Are you talking about an RFP from, let's say, a 2 buying group, or an RFP from a home care company 3 about pumps? 4 Which one are we talking about? 5 Q. Well, I think you've already addressed 6 the situation regarding home care company and 7 pumps; is that right? 8 A. Yes. 9 Q. Okay. Now let's talk about the buying 10 group. 11 A. Okay. To the -- to the best of my 12 memory, that wouldn't come from a representative. 13 An RFP would come from the buying group to 14 Abbott. So, I'm not sure a sales rep would be 15 even involved in that. 16 Q. Okay. Do you know, then -- so -- so, 17 in this instance, do you believe that this -- 18 this manual is talking about responding to RFPs 19 for pumps? 20 MR. COLE: Object to the form. 21 THE WITNESS: I'm not sure about 22 specifically what they had in mind when they put</p>

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<p>1 this together. 2 BY MS. FORD: 3 Q. Okay. 4 A. But number three, point number three, 5 is talking about home care and long-term care, 6 surgery centers, doctor's offices, and 7 distributors. It's not talking about the buying 8 groups. 9 Q. Okay. 10 A. So, I'm not sure -- I'm not sure if 11 that was specifically pertaining to buying groups 12 with this right here that they're talking about. 13 Q. Well, let's back up. 14 What I'm trying to understand is: Do 15 you recall seeing any written correspondence to 16 the alternate site field representatives -- 17 A. Uh-huh. 18 Q. -- describing to them what types of 19 information contract marketing would need to 20 respond to an RFP, if any kind? 21 A. Yes. 22 Q. Okay. In addition to the memo that you</p>	<p>1 are they asking for, what time frame are they 2 asking for, how long do we have to get back to 3 them on this, is there -- and that's pretty much 4 it. 5 BY MS. FORD: 6 Q. Okay. If you could turn to Page 6. 7 It's actually numbered Page 6. 8 And you see the heading near the top of 9 the page? It says, "Universal Questions to Ask." 10 Do you see that? 11 A. Yes. 12 Q. And again, we're talking about -- this 13 is a guide to alternate site field sales reps 14 about questions to ask their customers -- 15 A. Yes. 16 Q. -- is that right? 17 A. Yes. 18 Q. Okay. So -- and then down at the 19 bottom of the page, there's a subheading, 20 "Homecare Pharmacy"; is that right? 21 A. Yes. 22 Q. And is that -- would that be the same</p>
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<p>1 just described relating to -- responding to a 2 pump proposal, do you recall any other types of 3 correspondence -- 4 A. No. 5 Q. -- on that subject? 6 A. No. I don't. 7 Q. And the correspondence that you recall, 8 was that specific to responding to pump 9 proposals, or was it more general in nature in 10 terms of responding to any type of RFP? 11 A. What I have in mind is the pumps. 12 That's what I recall most, is pumps. So, in my 13 mind, that's what I'm talking about. 14 Q. Okay. And when you worked in alternate 15 site contract marketing, what type of information 16 would you have needed from the field sales reps 17 to respond to an RFP? 18 MR. COLE: Object to the form. 19 THE WITNESS: Just your -- your basic 20 information of name, address, what particular 21 product are they talking about, how many products 22 -- how many of those do they want, at what price</p>	<p>1 as a home infusion pharmacy? 2 MR. COLE: Object to the form. 3 THE WITNESS: Looking at that now, I 4 would say it's a home -- it's a home infusion 5 center, yes. 6 BY MS. FORD: 7 Q. Okay. So, you see here, "The following 8 information is needed." 9 Do you see that? 10 A. Yes. 11 Q. "Name, address, phone number, contact 12 persons, decision makers." 13 Are you with me? 14 A. Yes. 15 Q. Okay. 16 A. I'm -- I'm on Page 7. 17 Q. Okay. In reading down the list, is 18 this the type of information that you would have 19 needed as a contract marketing analyst to respond 20 to an RFP? 21 A. Yes. 22 Q. Okay. About halfway down the page, one</p>

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<p>1 of the questions to ask the customer is the</p> <p>2 "Reimbursement Mix, percent MediCare, MediCaid,</p> <p>3 MediCal, HMO contracts, and private."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. What -- what's the purpose of finding</p> <p>7 out about the reimbursement mix for home care</p> <p>8 pharmacies in responding to an RFP?</p> <p>9 A. That I didn't know.</p> <p>10 Q. Okay. Do you know what the</p> <p>11 reimbursement mix information was used for by</p> <p>12 alternate site contract marketing?</p> <p>13 A. No, I do not.</p> <p>14 Q. If you turn now to Page 8 of the</p> <p>15 document, at the top, there's another subheading,</p> <p>16 and this one is "Long Term Care Pharmacy."</p> <p>17 Do you see that?</p> <p>18 A. Yes, I do.</p> <p>19 Q. And that was another type of category</p> <p>20 of customer for alternate site; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And again, the -- the questions</p>	<p>1 A. After the new hire training?</p> <p>2 Q. Yes.</p> <p>3 A. At district meetings and national sales</p> <p>4 meetings.</p> <p>5 Q. And how often were district meetings</p> <p>6 held?</p> <p>7 A. It was up to the manager. Like, two to</p> <p>8 three times a year, we would get together as a</p> <p>9 district.</p> <p>10 Q. Okay. And how often were national</p> <p>11 sales meetings held?</p> <p>12 A. Once a year.</p> <p>13 Q. Okay. Do you recall the types of</p> <p>14 training that you received at district meetings?</p> <p>15 A. Mostly sales training. Just how to ask</p> <p>16 questions, present information. We would go over</p> <p>17 new sales brochures, any updates on the products.</p> <p>18 Q. And who typically provided the training</p> <p>19 at the district sales meetings, or district</p> <p>20 meetings?</p> <p>21 A. The key person would be our manager,</p> <p>22 Mike Ramsey. And then he would appoint different</p>
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<p>1 to ask.</p> <p>2 "The following information is needed:"</p> <p>3 is -- is what it says; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. And then about halfway down the page</p> <p>6 again, you see "Reimbursement Mix, percent</p> <p>7 MediCare, MediCaid, MediCal, HMO contracts, and</p> <p>8 private"?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And do you know why alternate</p> <p>11 site contract marketing would need to know the</p> <p>12 reimbursement mix in responding to an RFP for a</p> <p>13 long-term care pharmacy?</p> <p>14 A. No. I do not.</p> <p>15 Q. Okay. So, we've talked about the --</p> <p>16 the new hire training that you received as an</p> <p>17 alternate site sales rep.</p> <p>18 Did you also receive any -- did you</p> <p>19 receive any ongoing training?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And about how often would you</p> <p>22 receive training after the new hire training?</p>	<p>1 people. Do different role plays or do a</p> <p>2 presentation on the actual sales brochures, and</p> <p>3 things of that nature.</p> <p>4 Q. Did alternate site trainers ever come</p> <p>5 to the district meetings and provide training?</p> <p>6 A. I don't recall them doing that.</p> <p>7 Q. Okay. And what type of training would</p> <p>8 you receive at the national sales meetings, sales</p> <p>9 --</p> <p>10 A. That's -- that's when the trainers from</p> <p>11 alternate site product sales, they would lead the</p> <p>12 training.</p> <p>13 And actually, it would be similar to</p> <p>14 what I just described to you. Because what would</p> <p>15 happen, at the national sales meeting, the</p> <p>16 alternate site product sales and the marketing</p> <p>17 trainers and the marketing managers would get</p> <p>18 together with the new brochures, and they would</p> <p>19 present it to the sales force at the national</p> <p>20 meetings.</p> <p>21 And the purpose of the district</p> <p>22 meetings was to follow up on what was presented</p>

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<p style="text-align: right;">Page 158</p> <p>1 at the national sales meetings to make sure we 2 were implementing what we had just been given. 3 And that's pretty much how it worked. 4 Q. Okay. Do you recall receiving any 5 sales training at the national sales meeting, 6 other than product specific training? 7 A. What do you mean, "sales training"? 8 Q. Selling skills. 9 A. Yes. Yes. 10 Q. Okay. 11 A. They were incorporated into both, if 12 that makes sense. 13 Q. Okay. 14 A. You wouldn't separate them. You would 15 do your role playing while talking about your 16 product and the new features you're trying to 17 emphasize. So, they did it kind of together. 18 It's like, you know, here's a new pump that we're 19 going to have. These are the features. Okay. 20 We do that in the morning. 21 The afternoon, now we want you to do a 22 role play with this new pump because we don't</p>	<p style="text-align: right;">Page 160</p> <p>1 to the products you have, so you couldn't just 2 ask an abstract question. You had to ask a 3 question related to the product you have. 4 BY MS. FORD: 5 Q. Sure. 6 A. Does that make -- 7 Q. Yeah. 8 A. Okay. 9 Q. I guess -- 10 A. That's what I mean. 11 Q. -- the distinction I'm trying to make 12 is that: So, you might have, in one instance, a 13 new pump, and so you spend a day learning about 14 the new pump -- 15 A. Correct. 16 Q. -- and its features and, you know, what 17 products go in the pump. And -- and then you 18 spend the afternoon learning how to sell that 19 pump to your customers. 20 And I'm trying to differentiate that 21 between training that's primarily about the pump, 22 which includes some selling skills, with separate</p>
<p style="text-align: right;">Page 159</p> <p>1 want you fumbling around when you're trying to 2 present it to a customer. So, that's what the 3 training was. 4 Q. Okay. Do you recall any selling skills 5 training that was not product specific? 6 A. No. 7 Q. Do you -- 8 A. What -- 9 Q. -- do you remember a program such as 10 professional selling skills? 11 A. Yes. 12 Q. Okay. 13 A. Yes. 14 Q. And was that tied to a particular 15 product? 16 A. It was -- 17 MR. COLE: Object to the form. 18 THE WITNESS: The professional selling 19 skills was tied to all of the products. My 20 definition of professional selling skills is just 21 how to probe and ask questions. 22 But you're asking questions in relation</p>	<p style="text-align: right;">Page 161</p> <p>1 professional selling skills training that is not 2 related to a new product, for example. 3 A. If I'm understanding correctly, this 4 way: You know, Eric, here's the new pump that we 5 have, and here's all of the features. All right, 6 session one. 7 And then maybe that afternoon, you 8 know, we want to do professional selling skills, 9 along the lines of, don't be afraid if there is 10 silence, or don't ask close-ended questions. And 11 we would cover that. 12 And then the next session would be, 13 okay, based upon training on the new product, 14 based upon the professional selling skills, I 15 want you to do a role play where you're actually 16 incorporating both. And someone would play like 17 they're a customer, and you would do a role play 18 trying to remember, don't ask close-ended 19 questions and talk about the features of your 20 product. "Doctor, wouldn't you agree that, you 21 know, having an I.V. pump with a whistle on it is 22 beneficial to your practice?"</p>

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<p style="text-align: right;">Page 162</p> <p>1 So, I'm using the information I know</p> <p>2 about my product, and I'm also using professional</p> <p>3 selling skills.</p> <p>4 Q. Okay.</p> <p>5 A. So, that's the type of training we</p> <p>6 received at the national sales meeting, and then</p> <p>7 it was followed up in the district --</p> <p>8 Q. Okay.</p> <p>9 A. -- sales meetings.</p> <p>10 Q. And then other than product specific</p> <p>11 training and selling skills training, do you</p> <p>12 recall any other types of training that you</p> <p>13 received as a sales rep?</p> <p>14 A. Yes.</p> <p>15 Q. And what kind of training was that?</p> <p>16 A. Safety training, like hazmat, needle</p> <p>17 disposal, that type of training.</p> <p>18 Q. Okay. Do you recall receiving any</p> <p>19 ethics training?</p> <p>20 A. Yes.</p> <p>21 Q. And what -- how was the ethics training</p> <p>22 provided?</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. -- when you were in contract marketing,</p> <p>2 was it computer based at that point?</p> <p>3 A. I don't remember.</p> <p>4 Q. Okay. Do you recall ever sitting in a</p> <p>5 seminar regarding ethics?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And when was that?</p> <p>8 A. That was during when I was in the field</p> <p>9 as a sales rep.</p> <p>10 Q. Okay. Did that --</p> <p>11 A. And also during new hire. Also, we</p> <p>12 talked about it there.</p> <p>13 Q. Okay. So, a component of the new hire</p> <p>14 training was about ethics?</p> <p>15 Is that what I'm hearing you say?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Okay. And then you -- aside from the</p> <p>18 new hire training, at some time when you were a</p> <p>19 sales rep, you -- you recall being at a seminar,</p> <p>20 or something, where ethics was discussed?</p> <p>21 A. Yes.</p> <p>22 Q. Would that have likely been at a</p>
<p style="text-align: right;">Page 163</p> <p>1 A. Abbott has an ethics program that</p> <p>2 everyone has to participate in the company. And</p> <p>3 so, periodically, we have to go through that</p> <p>4 training, and it's -- I can't recall at the time,</p> <p>5 but now it's on -- it's modules on the computer</p> <p>6 that you would do that.</p> <p>7 Q. Okay. Does that training program have</p> <p>8 a name?</p> <p>9 A. Yes. It's called LERN, legal ethical</p> <p>10 resource network.</p> <p>11 Q. Okay. And when you participated in the</p> <p>12 LERN training -- I guess, when was the first time</p> <p>13 that you recall participating in -- in the LERN</p> <p>14 training?</p> <p>15 A. The first time I recall? It would --</p> <p>16 it would be in contract marketing, is the first</p> <p>17 time I remember hearing about LERN.</p> <p>18 Q. Okay.</p> <p>19 A. But that's my best understanding of it.</p> <p>20 Q. Okay. And at the time that you recall</p> <p>21 hearing about the LERN training --</p> <p>22 A. Uh-huh.</p>	<p style="text-align: right;">Page 165</p> <p>1 national sales meeting?</p> <p>2 A. I don't know if it was a national or</p> <p>3 district. I'm --</p> <p>4 Q. Okay.</p> <p>5 A. I don't know for sure.</p> <p>6 Q. But one of the two?</p> <p>7 A. Yes.</p> <p>8 Q. It wasn't a separate event?</p> <p>9 It wasn't a separate event that you</p> <p>10 came just for this --</p> <p>11 A. No.</p> <p>12 Q. -- ethics training?</p> <p>13 A. I don't recall ever being brought to</p> <p>14 Chicago just for an ethics --</p> <p>15 Q. Okay.</p> <p>16 A. -- training course.</p> <p>17 Q. Okay. And then at some point, the</p> <p>18 ethics training became computer based; is that</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And when you participate in the</p> <p>22 ethics training on the computer, are you doing it</p>

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<p style="text-align: right;">Page 166</p> <p>1 from your personal computer?</p> <p>2 A. No.</p> <p>3 Q. Okay. Are you together in a room with</p> <p>4 other people --</p> <p>5 A. No.</p> <p>6 Q. -- doing the same training?</p> <p>7 A. No.</p> <p>8 Q. Okay. When I said "personal computer,"</p> <p>9 I meant your personal Abbott issued computer.</p> <p>10 A. Oh, I'm sorry. I thought you meant</p> <p>11 like my home computer.</p> <p>12 No. Abbott computer.</p> <p>13 Q. Okay. So, at your desk?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And kind of on your own?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 A. But we had time frames by which we</p> <p>19 could complete the training, and we were also</p> <p>20 graded on the training too.</p> <p>21 Q. Okay. And at the end of the training,</p> <p>22 did a message come up saying that you've</p>	<p style="text-align: right;">Page 168</p> <p>1 continuing today?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So, during the time that you</p> <p>4 were an alternate site sales rep --</p> <p>5 A. Yes.</p> <p>6 Q. -- do you recall any other types of</p> <p>7 training that you participated in?</p> <p>8 We've talked -- we've talked about new</p> <p>9 hire training, ongoing product and selling skills</p> <p>10 training, and then ethics training, and safety</p> <p>11 training.</p> <p>12 A. Yes.</p> <p>13 Q. Do you recall any others?</p> <p>14 A. I don't recall anything specifically</p> <p>15 beyond -- those are the ones that come straight</p> <p>16 to mind.</p> <p>17 Q. Okay.</p> <p>18 A. But beyond that, no.</p> <p>19 Q. Okay. Do you recall receiving any</p> <p>20 other manuals while you were in alternate site as</p> <p>21 a sales rep?</p> <p>22 A. Excluding product manuals or --</p>
<p style="text-align: right;">Page 167</p> <p>1 successfully passed the training?</p> <p>2 A. Yes.</p> <p>3 Q. And did you have, like, a certificate</p> <p>4 to print out or something?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And did you maintain copies of</p> <p>7 those certificates?</p> <p>8 A. No. I didn't print the certificates.</p> <p>9 Q. Okay. Did somehow someone responsible</p> <p>10 for LERN training get notified that you had</p> <p>11 completed the training?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Do you know who that person was?</p> <p>14 A. I know my manager was one.</p> <p>15 Q. Okay. Do you know who else besides</p> <p>16 your manager?</p> <p>17 A. I -- I don't know specifically who saw</p> <p>18 it, but other people did see this report.</p> <p>19 Q. Okay. And was the LERN training</p> <p>20 mandatory?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And is that LERN training</p>	<p style="text-align: right;">Page 169</p> <p>1 Q. Uh-huh.</p> <p>2 A. I don't remember receiving anything but</p> <p>3 product manuals.</p> <p>4 Q. Okay. Now, while you were in contract</p> <p>5 marketing, do you recall receiving any other kind</p> <p>6 of training than the -- the hands-on training</p> <p>7 that we've discussed and the LERN training?</p> <p>8 A. No. Most of it was hands-on training.</p> <p>9 Q. Okay. And do you recall any other</p> <p>10 types of manuals or modules you may have received</p> <p>11 in that position?</p> <p>12 A. Beyond what I've already stated?</p> <p>13 Q. Right.</p> <p>14 A. Safety and just things like that.</p> <p>15 I'm -- I don't want to make this</p> <p>16 assumption: You're not talking about human</p> <p>17 resources and things like that, are you?</p> <p>18 Pertaining to my medical benefits or anything</p> <p>19 like that?</p> <p>20 Q. You know -- no. I'm not --</p> <p>21 A. Okay.</p> <p>22 Q. Yeah. More job -- job specific</p>

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<p style="text-align: right;">Page 170</p> <p>1 training, not job benefit training, or job 2 benefit information. 3 A. That -- okay. 4 Q. Okay. 5 A. No. 6 Q. So, that's it? 7 A. Uh-huh. 8 Q. Okay. Okay. When you were in 9 alternate site contract marketing, what type of 10 pricing terms did you use in your day-to-day 11 work? 12 A. What do you mean by "terms"? 13 Q. For example, did you use list price? 14 A. Yes. 15 Q. And what does list price mean? 16 A. List price, to me, means noncontract 17 price. 18 Q. Okay. Did some of the accounts that 19 you worked on get billed at list price? 20 A. Yes. 21 Q. And which accounts were those? 22 A. I don't know specifically which</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. Okay. And if an account had list 2 price, did they typically, at some point, change 3 to a contract price? 4 A. Yes. 5 Q. Okay. Was list price also known as 6 catalog price? 7 A. I never refer to it as that. 8 Q. Okay. Were the list prices published 9 anywhere? 10 A. Published for -- for me, for customers, 11 for -- or just anywhere? 12 Q. Were they -- were they published 13 anywhere? 14 A. Yes. 15 Q. Okay. And were they published for you? 16 A. Yes. 17 Q. And what -- where would you go to find 18 list price? 19 A. I would have a file next to my desk. 20 It would have all of the products on it with 21 their list price on it. 22 Q. Okay. And was that list published for</p>
<p style="text-align: right;">Page 171</p> <p>1 accounts were billed at list price. 2 Q. Okay. Did most of the accounts that 3 you worked on have contract pricing? 4 A. Yes. 5 Q. Okay. And if you could give me 6 percentage. 7 About how -- what percentage of your 8 accounts had contract pricing? 9 MR. COLE: Object to the form. 10 THE WITNESS: I can't answer that with 11 any certainty. I -- so, I can't answer what -- I 12 think you're looking for a specific number as to 13 how many had contract, and I can't answer it. I 14 don't know a specific number as to how many had 15 contracts. 16 BY MS. FORD: 17 Q. Did the majority of your accounts have 18 contract pricing? 19 A. Yes. 20 Q. Okay. Was it unusual for an account to 21 have list price? 22 A. Yes.</p>	<p style="text-align: right;">Page 173</p> <p>1 -- were the list prices published for customers? 2 A. I believe they could call in to 3 customer service and get that price. 4 Q. Okay. So, to the best of your 5 recollection, you didn't send out the list prices 6 to your accounts? 7 A. No. 8 Q. Either as a sales rep -- did you as a 9 sales rep? 10 A. Not to my knowledge. 11 Q. Okay. And what about in contract 12 marketing? 13 A. Yes. 14 Q. Okay. So, in contract marketing, you 15 would send out the list price to the accounts 16 that you worked on? 17 A. No. Not -- not to all of the accounts 18 -- 19 Q. Okay. 20 A. -- that I worked on. 21 Q. Which accounts? 22 A. If there was a -- if there were an</p>

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<p style="text-align: right;">Page 174</p> <p>1 account that was a very small account, and they 2 wanted to order a product one time and did not 3 want to sign a contract, because they're only 4 going to order it one time for, let's say, a 5 special patient, to them you would provide them 6 list price, because I'm just buying one widget. 7 I don't need a five-year agreement or a 8 three-year agreement. Just tell me what it's 9 going to be to buy this one product this one 10 time. And so, that's the only occasion I 11 remember ever sending out a list price -- 12 Q. Okay. 13 A. -- to anybody, for any reason. 14 Q. So, it wasn't a complete list of 15 Abbott's list prices. 16 It was a list price for one particular 17 product; is that -- am I understanding you 18 correctly? 19 A. No. It would probably be just all of 20 the products, just -- I would give it to that 21 customer. 22 Q. Okay. And how -- how voluminous was</p>	<p style="text-align: right;">Page 176</p> <p>1 A. If -- if, for some reason, there was a 2 malfunction with the computer or a contract fell 3 out of the system, for whatever reason, and a 4 customer purchased a product, it would show up as 5 list price. And so, I would need the list then 6 to see that they were mistakenly overcharged. 7 So, I would use the -- the list price in that 8 situation. That's the only other time I can 9 think of -- 10 Q. Okay. 11 A. -- that I would need to do that. 12 Q. And you just mentioned that, in that 13 situation that you just described, the customer 14 would have been overcharged if their contract had 15 fallen out of the system -- 16 A. Uh-huh. 17 Q. -- and they were charged list price; is 18 that right? 19 A. Uh-huh. 20 Q. So, is list price higher than contract 21 price? 22 A. Yes.</p>
<p style="text-align: right;">Page 175</p> <p>1 that listing? 2 A. I have no idea how -- but -- I don't 3 know how big the actual list is. But if I recall 4 correctly, we had over 200 products, so that 5 gives you some idea -- 6 Q. Okay. 7 A. -- of what we're talking about. 8 Q. So, if a customer wanted to buy one 9 product on one occasion and didn't want a 10 contract -- 11 A. Uh-huh. 12 Q. -- did I understand you correctly that 13 you would send them the entire list, price 14 listing, for all of Abbott's products? 15 A. Yes. 16 Q. Okay. Do you know of any other use for 17 the list price other than the situation we just 18 discussed, when you have a customer who wants to 19 purchase a product without entering into a 20 contract? 21 A. Yes. 22 Q. And what's that?</p>	<p style="text-align: right;">Page 177</p> <p>1 Q. Okay. Have you heard of the term 2 RxLink pricing" before? 3 A. Yes. 4 Q. And what is RxLink pricing? 5 A. I don't remember what it was, but I've 6 heard of the term before. 7 Q. Okay. Was it a term that you used in 8 alternate site contract marketing? 9 A. Yes. 10 Q. Okay. Was it a term that you used as a 11 field sales rep? 12 A. I don't recall that. 13 Q. Okay. If you take the -- 14 A. Yeah. 15 Q. -- the basic operating procedures 16 manual back out again. 17 If you could turn to Page 254. And 18 again, this is in Plaintiff's Exhibit 1321. 19 MR. COLE: What page is that, Becky? 20 MS. FORD: 254. 21 THE WITNESS: 254. 22 BY MS. FORD:</p>

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<p style="text-align: right;">Page 178</p> <p>1 Q. In the first paragraph there, it says, 2 RxLink pricing is provided primarily to allow 3 customers to buy product from wholesalers at less 4 than list price and ensure that the wholesalers 5 report the sale to Abbott for tracking purposes." 6 Did I read that accurately? 7 A. Yes. 8 Q. Does that refresh your recollection 9 about what RxLink pricing is? 10 MR. COLE: Object to the form. 11 THE WITNESS: No. 12 BY MS. FORD: 13 Q. Did you understand RxLink pricing to be 14 used in connection with sales through -- sales of 15 Abbott's products through wholesalers? 16 A. Yes. Reading this, yes. 17 Q. Okay. It says, "There are two RxLink 18 prices, RxLink wholesale acquisition," and then 19 in parentheses, (RxLink WAC), and RxLink 20 Customer. Wholesalers buy product at the Abbott 21 RxLink WAC price and sell it to customers that do 22 not have a contract at RxLink customer prices."</p>	<p style="text-align: right;">Page 180</p> <p>1 I remember it to be, is just a standard field 2 agreement that the reps had. And if they went 3 into a small mom and pop's account, that, let's 4 say, wanted to order that one product but did not 5 want to pay list price and did not want to join a 6 buying group, then they had -- we had an 7 individual contract that they could sign and send 8 in, and they would be placed on that contract. 9 That's what I remember the individual 10 field contract to be. 11 Q. Okay. So, would the price that that 12 customer would get from the field generated 13 contract -- 14 A. Uh-huh. 15 Q. -- be lower than list price? 16 A. Yes. 17 Q. Okay. And we had discussed average 18 wholesale price briefly earlier. 19 Do you recall that discussion? 20 A. Yes. 21 Q. Okay. And you were familiar with the 22 term "average wholesale price," also referenced</p>
<p style="text-align: right;">Page 179</p> <p>1 Did I read that accurately? 2 A. Yes. 3 Q. Okay. Does that refresh your 4 recollection about RxLink pricing? 5 A. No. 6 Q. Is it consistent with your 7 understanding about what RxLink pricing was? 8 MR. COLE: Object to the form. 9 THE WITNESS: No. I don't recall it, 10 so no. 11 BY MS. FORD: 12 Q. Okay. So, you don't recall hearing or 13 using RxLink WAC? 14 A. No. 15 Q. Or RxLink customer? 16 A. No. 17 Q. Okay. Have you heard of the phrase 18 "field generated contract pricing"? 19 A. Yes. 20 Q. And what is field generated contract 21 pricing? 22 A. Field generated contract pricing, what</p>	<p style="text-align: right;">Page 181</p> <p>1 as AWP; is that right? 2 A. Yeah. I had heard the term before, 3 yes. 4 Q. Okay. And what do you understand the - 5 - the term "average wholesale price" to mean? 6 MR. COLE: Object to the form. 7 THE WITNESS: My definition of that? 8 Average would probably be the tip-off, 9 that it's an average. That's pretty much -- I 10 don't know the technical definition of it. Just 11 looking at the word, it's just an average of 12 wholesale prices. 13 BY MS. FORD: 14 Q. Would that be -- your understanding -- 15 would your understanding be that it's an average 16 of what your -- an average of what Abbott's 17 commercial customers pay for product? 18 MR. COLE: Object to the form. 19 THE WITNESS: That I don't know. 20 BY MS. FORD: 21 Q. Okay. If you could turn to Page 247 of 22 the manual.</p>

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<p style="text-align: right;">Page 182</p> <p>1 A. I do not have a Page 247.</p> <p>2 Q. Okay.</p> <p>3 A. I'm sorry. I do. It's just mixed up.</p> <p>4 It's in the wrong spot. I got it.</p> <p>5 I got it.</p> <p>6 Q. Okay. At the top of the page, it says,</p> <p>7 "Reference Books."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And then it says, "Contract Marketing</p> <p>11 personnel frequently need drug reference books to</p> <p>12 research drug topics. The department maintains</p> <p>13 three books that have proven their worth over the</p> <p>14 years."</p> <p>15 Did I read that accurately?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And the first book that's listed</p> <p>18 is Drug Topics Redbook: Pharmacy's Fundamental -</p> <p>19 - Pharmacy's Fundamental Reference; is that</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 Q. And it says, "The Drug Topics Redbook</p>	<p style="text-align: right;">Page 184</p> <p>1 GeriMed.</p> <p>2 A. Exhibit French 1378?</p> <p>3 Q. Uh-huh.</p> <p>4 THE VIDEOGRAPHER: Excuse me. Can I</p> <p>5 take about 30 seconds to swap tapes here?</p> <p>6 MS. FORD: Sure.</p> <p>7 THE VIDEOGRAPHER: We'll go off the</p> <p>8 record at the conclusion of tape number two at</p> <p>9 11:57 a.m.</p> <p>10 THE VIDEOGRAPHER: Back on the record</p> <p>11 at the beginning of tape number three at 1:14</p> <p>12 p.m.</p> <p>13 MS. FORD: Let's ask the court reporter</p> <p>14 to read back the last question.</p> <p>15 (Previous question was read back</p> <p>16 by the court reporter commencing as follows:</p> <p>17 Question: We saw earlier, in some of</p> <p>18 the documents that we were looking at, for</p> <p>19 example, Exhibit French 1378, that you included</p> <p>20 AWP information on spreadsheets that you sent to</p> <p>21 GeriMed.</p> <p>22 Answer: Exhibit French 1378?</p>
<p style="text-align: right;">Page 183</p> <p>1 details extremely limited data about the drug and</p> <p>2 average wholesale price" -- in parentheses AW --</p> <p>3 "(AWP). AWP is calculated by Redbook as list</p> <p>4 price minus 5 percent plus 25 percent. Thus, a</p> <p>5 product with a list price of 100 dollars would be</p> <p>6 discounted by 5 percent, to 95, and then</p> <p>7 increased by 25 percent, to 118.75, for an</p> <p>8 overall increase of 18.75 percent."</p> <p>9 Did I read that accurately?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Did you understand there to be a</p> <p>12 relationship between Abbott's list price and AWP?</p> <p>13 MR. COLE: Object to the form.</p> <p>14 THE WITNESS: No.</p> <p>15 BY MS. FORD:</p> <p>16 Q. Did you have any understanding of how</p> <p>17 AWP was calculated?</p> <p>18 A. No.</p> <p>19 Q. We saw earlier, in some of the</p> <p>20 documents that we were looking at, for example,</p> <p>21 Exhibit French 1378, that you included AWP</p> <p>22 information on spreadsheets that you sent to</p>	<p style="text-align: right;">Page 185</p> <p>1 Question: Uh-huh.)</p> <p>2 BY MS. FORD:</p> <p>3 Q. Okay. Where did you obtain the AWP</p> <p>4 information to include in documents such as</p> <p>5 Exhibit French 1378?</p> <p>6 MR. COLE: Object to the form.</p> <p>7 THE WITNESS: I don't remember.</p> <p>8 BY MS. FORD:</p> <p>9 Q. Okay. Did you have, for example, a</p> <p>10 Redbook?</p> <p>11 A. No.</p> <p>12 Q. Did you have -- do you know what a</p> <p>13 Redbook is?</p> <p>14 A. No.</p> <p>15 Q. You see we were looking at the Basic</p> <p>16 Operating Procedure Manual, Plaintiff's Exhibit</p> <p>17 1321, you were last on Page 247.</p> <p>18 And it says here in the Operating</p> <p>19 Procedures Manual for contract marketing that,</p> <p>20 "Contract Marketing personnel frequently need</p> <p>21 drug reference book to research drug topics. The</p> <p>22 department maintains three books that have proven</p>

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<p style="text-align: right;">Page 186</p> <p>1 their worth over the years."</p> <p>2 And the first that it has listed is</p> <p>3 Drug Topics Redbook: Pharmacy's Fundamental</p> <p>4 Reference.</p> <p>5 Now, when I said the "Redbook," that's</p> <p>6 the book I'm referring to.</p> <p>7 A. Yes.</p> <p>8 Q. Did you ever refer to the Redbook?</p> <p>9 A. No.</p> <p>10 Q. Did you ever go and look at it on the</p> <p>11 shelf?</p> <p>12 A. I don't remember a Redbook being on the</p> <p>13 shelf.</p> <p>14 Q. Okay. Looking back at Exhibit French</p> <p>15 1378, where would you have gotten the AWP</p> <p>16 information to put in this spreadsheet?</p> <p>17 MR. COLE: Object to the form.</p> <p>18 THE WITNESS: I don't know.</p> <p>19 BY MS. FORD:</p> <p>20 Q. Do you have any idea of what possible</p> <p>21 sources there were for getting AWP information?</p> <p>22 MR. COLE: Object to the form.</p>	<p style="text-align: right;">Page 188</p> <p>1 right?</p> <p>2 A. I did not go to a Redbook to get any</p> <p>3 information.</p> <p>4 Q. Okay. And you don't recall using the</p> <p>5 formula that is shown here of taking Abbott's</p> <p>6 list price and applying the formula to get the</p> <p>7 AWP; is that right?</p> <p>8 A. No, I do not.</p> <p>9 Q. So, as you're sitting here today, you</p> <p>10 have no recollection of where you would have</p> <p>11 gotten the AWP information?</p> <p>12 A. No, I do not.</p> <p>13 Q. And for what purpose would you have put</p> <p>14 AWP information in the spreadsheet?</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you believe it was information that</p> <p>17 the customer was requesting?</p> <p>18 A. I don't -- I don't know.</p> <p>19 Q. Okay. Would you typically put</p> <p>20 information in pricing that you were sending out</p> <p>21 to customers that they didn't want?</p> <p>22 Would you typically include irrelevant</p>
<p style="text-align: right;">Page 187</p> <p>1 THE WITNESS: No.</p> <p>2 BY MS. FORD:</p> <p>3 Q. Did you calculate the AWP yourself?</p> <p>4 A. No.</p> <p>5 Q. Okay. Looking back and at Page 247, we</p> <p>6 previously talked about, before the break, there</p> <p>7 is a formula here that describes using</p> <p>8 manufacturer's list price to get to the AWP.</p> <p>9 Do you recall that discussion?</p> <p>10 A. The discussion that you and I had?</p> <p>11 Q. Yes.</p> <p>12 A. Yes.</p> <p>13 Q. Okay. So, according to Abbott's</p> <p>14 analysts Basic Operating Procedures Manual, AWP</p> <p>15 is calculated by Redbook as list price minus 5</p> <p>16 percent plus 25 percent?</p> <p>17 MR. COLE: Object to form.</p> <p>18 BY MS. FORD:</p> <p>19 Q. That's what the manual says?</p> <p>20 A. That's what the manual says.</p> <p>21 Q. But you don't recall going to the</p> <p>22 Redbook to get the AWP information; is that</p>	<p style="text-align: right;">Page 189</p> <p>1 information in pricing that was sent out to</p> <p>2 customers?</p> <p>3 MR. COLE: Object to the form.</p> <p>4 THE WITNESS: Can you rephrase that, or</p> <p>5 I don't --</p> <p>6 BY MS. FORD:</p> <p>7 Q. I'm trying to understand the purpose</p> <p>8 behind you putting the AWP column and numbers for</p> <p>9 AWP in this spreadsheet that you sent to GeriMed</p> <p>10 with the 2000 manufacturer's listing of</p> <p>11 pharmaceutical awards and --</p> <p>12 A. But what I'm saying is, I don't recall</p> <p>13 what -- I don't recall what that was in there</p> <p>14 for.</p> <p>15 And the question that you just asked</p> <p>16 me, would I put informing in there if it wasn't</p> <p>17 relevant to the customer, but I don't really know</p> <p>18 what would be relevant from one customer to</p> <p>19 another. That's why I was kind of pausing in</p> <p>20 answering that question because I didn't know how</p> <p>21 to answer that.</p> <p>22 Q. Okay. Even though customers may have</p>

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<p style="text-align: right;">Page 190</p> <p>1 different information that they find is relevant, 2 with any particular customer that you're dealing 3 with, at one point in time, in this instance, 4 GeriMed, would you have given them information 5 that was irrelevant either to Abbott or to 6 GeriMed? 7 MR. COLE: Object to the form. 8 THE WITNESS: I don't know. 9 BY MS. FORD: 10 Q. Okay. 11 A. Because I'm not sure I understand the 12 question. 13 Q. Okay. Do you think that somebody 14 wanted to know the AWP for Abbott's products? 15 A. That I didn't know. 16 Q. Okay. Would you typically include 17 information in a spreadsheet that nobody cared 18 about? 19 A. I don't know. I guess as I'm hearing 20 this question, I'm thinking, okay, on this one, 21 right in front of me it, says "generic name, 22 brand name," one customer may not care about</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. Okay. When I -- when I say 2 "reimbursement," do you understand that I'm 3 discussing reimbursement by Medicare, Medicaid, 4 or a third-party insurance company? 5 A. Yes. 6 Q. Okay. Did you understand that that 7 Abbott customers who purchased products from 8 Abbott, would, in some instances, be reimbursed 9 by Medicare, for example? 10 MR. COLE: Object to the form. 11 THE WITNESS: I don't remember. 12 BY MS. FORD: 13 Q. Do you recall -- at any time during 14 your tenure in alternate site, do you recall 15 discussions about Abbott customers receiving 16 reimbursement from third party payors such as 17 Medicare? 18 A. I don't recall a conversation like 19 that. 20 Q. Okay. Do you recall any training about 21 reimbursement? 22 A. No.</p>
<p style="text-align: right;">Page 191</p> <p>1 brand names, so that would be irrelevant to them. 2 Q. Okay. 3 A. But I may always include the brand and 4 generic names, so that's why I'm just struggling 5 with the way that you're asking me that question. 6 Q. Did you always include you the AWP and 7 dollar difference AWP? 8 A. That I don't know. I don't recall. 9 Q. Okay. So, sitting here today, you have 10 no recollection of why, at least for GeriMed, you 11 would have provided -- and others in alternate 12 site contract marketing -- would have provided 13 AWP information to GeriMed? 14 A. I don't know why that would be in 15 there. 16 Q. Or where you would have gotten AWP 17 information? 18 A. Correct. 19 Q. Did you understand that AWP to have 20 some bearing on reimbursement that Abbott 21 customers would receive? 22 A. Sitting here right now, no.</p>	<p style="text-align: right;">Page 193</p> <p>1 Q. During the time that you were an 2 alternate site sales rep, did any of your 3 customers ask you about reimbursement for Abbott 4 products? 5 A. I don't remember anybody asking me 6 about that. 7 Q. Okay. I'm going to show you an exhibit 8 that has been previously marked as Exhibit 9 Burchieri 1191. 10 A. Thank you. 11 Q. And for the record, this is ABT072-0565 12 through ABT072-0567. 13 Mr. French, at the top of this exhibit, 14 there is an e-mail dated January 18th, 2002. 15 Do you see that? 16 A. Can I have just a second to look at 17 this real quick? 18 Q. Sure. 19 A. Okay. 20 Q. Okay. So, at the top of the exhibit, 21 does this appear to be an e-mail from Dave 22 Harling -- I'm sorry, from Andy Crofoot to Dave</p>

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<p style="text-align: right;">Page 194</p> <p>1 Harling dated January 18th, 2002?</p> <p>2 A. Yes, it is.</p> <p>3 Q. Okay. And is he forwarding an earlier</p> <p>4 message?</p> <p>5 And if you look at the bottom of the</p> <p>6 page, the date of the earlier message is May</p> <p>7 23rd, 2000; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And on the earlier message, it's</p> <p>10 from Carolyn Hanner; is that right?</p> <p>11 A. No. Which -- I'm on the second -- go</p> <p>12 ahead, please.</p> <p>13 MR. COLE: Go ahead.</p> <p>14 MS. FORD: Okay.</p> <p>15 MR. COLE: I think she's looking at the</p> <p>16 first page still.</p> <p>17 BY MS. FORD:</p> <p>18 Q. If you look at the -- where it says</p> <p>19 "original message"?</p> <p>20 A. Says, original -- it's from Scott to</p> <p>21 Caroline.</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">Page 196</p> <p>1 message sent by Caroline Hanner; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And then now turning to Page 2,</p> <p>4 to the message I think you were referring to,</p> <p>5 also dated May 23rd. It's a message from Scott</p> <p>6 Glover to Caroline Hanner; is that right?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And at this point in time, May</p> <p>9 of 2000, do you know what position Scott Glover</p> <p>10 held?</p> <p>11 A. He would have been director of sales.</p> <p>12 Q. For alternate site?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 A. Yes. I'm sorry.</p> <p>16 Q. That's okay.</p> <p>17 Is that -- did that position also go by</p> <p>18 national sales manager as the title, or is that a</p> <p>19 different title?</p> <p>20 A. No. I'm sorry. Same -- same thing.</p> <p>21 I'm just --</p> <p>22 Q. Okay. No. That's okay.</p>
<p style="text-align: right;">Page 195</p> <p>1 A. Not from Carolyn.</p> <p>2 Q. Well, I'm actually looking at -- still</p> <p>3 on Page 1, where you see "original message," and</p> <p>4 it says, "From Caroline Hanner to," and then</p> <p>5 there's a whole list of "to's."</p> <p>6 A. Okay. I see it. I'm sorry.</p> <p>7 Q. Okay.</p> <p>8 A. I see where you're -- you're talking</p> <p>9 about, yes.</p> <p>10 Q. And this is the actual message that's</p> <p>11 dated -- message that is dated May 23rd, 2000,</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 MR. COLE: Down at the bottom?</p> <p>15 THE WITNESS: Yeah.</p> <p>16 BY MS. FORD:</p> <p>17 Q. And then in the -- about the middle of</p> <p>18 the page, do you see "Eric French," your name,</p> <p>19 there?</p> <p>20 A. Yes, I do.</p> <p>21 Q. And it appears that you're a recipient</p> <p>22 of -- one of the recipients of this e-mail</p>	<p style="text-align: right;">Page 197</p> <p>1 A. His -- I was speaking more towards his</p> <p>2 function. So, yes, you're right.</p> <p>3 Q. Okay. So, his title was national sales</p> <p>4 manager?</p> <p>5 A. Yes.</p> <p>6 Q. And that was over all of alternate</p> <p>7 site; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And in this message from 1:17</p> <p>10 p.m., it's Scott Glover telling Caroline Hanner,</p> <p>11 "Please forward on to the sales force. Thanks,</p> <p>12 Rob, for the very informative data on</p> <p>13 Federal/State Medicaid AWP."</p> <p>14 Did I read that accurately?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So, does it appear, from this</p> <p>17 chain of e-mails, that Mr. Glover received an e-</p> <p>18 mail, and then he instructed Ms. Hanner to</p> <p>19 forward it on to the alternate site sales force?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And you were one of the sales</p> <p>22 force members that received the forwarded</p>

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<p style="text-align: right;">Page 198</p> <p>1 message; is that right?</p> <p>2 A. No.</p> <p>3 Q. You were not?</p> <p>4 A. No. I was in contract marketing.</p> <p>5 Q. Okay. But Mr. Glover said, "Please</p> <p>6 forward on to the sales force," and when Ms.</p> <p>7 Hanner forwarded it on, she forwarded it on to</p> <p>8 the sales force as well as at least you, who were</p> <p>9 in contract marketing?</p> <p>10 A. Yeah. She just hadn't -- evidently,</p> <p>11 she hadn't taken me off the list.</p> <p>12 Q. Okay.</p> <p>13 A. The e-mail list.</p> <p>14 Q. Okay.</p> <p>15 A. But I was an analyst at that point.</p> <p>16 Q. Okay. We see some other names on</p> <p>17 there, like Scott Glover, Trudy Burchieri.</p> <p>18 They weren't members of the sales</p> <p>19 force, were they?</p> <p>20 A. Well, Scott was the person we just</p> <p>21 talked about, the national sales director.</p> <p>22 Q. Was it trainer? Was he a trainer?</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. Uh-huh.</p> <p>2 A. And if you look at -- look at Trudy's</p> <p>3 name, right after her name, it says "APX."</p> <p>4 Q. Okay.</p> <p>5 A. That's specific to Abbott Park. That's</p> <p>6 an Abbott Park e-mail address.</p> <p>7 Q. Okay.</p> <p>8 A. And if you look at my e-mail address,</p> <p>9 it's still territory specific. So, at that</p> <p>10 point, I would have been receiving e-mails from</p> <p>11 my Abbott Park e-mail address, so I don't know if</p> <p>12 I got that or not.</p> <p>13 Q. Okay. Were -- were your e-mails -- was</p> <p>14 your e-mail address forwarded to your Abbott Park</p> <p>15 once you --</p> <p>16 A. No. You get new -- you get new e-mail</p> <p>17 addresses when you come to the park.</p> <p>18 Q. Okay. So, do you think that this e-</p> <p>19 mail just got lost in --</p> <p>20 A. That I don't --</p> <p>21 Q. -- cyberspace?</p> <p>22 A. No. I don't -- I don't know that.</p>
<p style="text-align: right;">Page 199</p> <p>1 A. No. Scott Glover?</p> <p>2 Q. Okay.</p> <p>3 A. Scott Glover was the national sales</p> <p>4 director.</p> <p>5 Q. Sure.</p> <p>6 A. I think you said Trudy's name?</p> <p>7 Q. Yes.</p> <p>8 A. I don't see her, but if Trudy's --</p> <p>9 where's her name at on this -- oh, I see it. I'm</p> <p>10 sorry. Yeah. Trudy was a -- if you're asking me</p> <p>11 was she a trainer?</p> <p>12 Q. Yes.</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So, you -- do you believe that</p> <p>15 you would have received this message in the</p> <p>16 ordinary course of business at Abbott?</p> <p>17 A. No.</p> <p>18 Q. You would not have?</p> <p>19 A. No.</p> <p>20 Q. And why is that?</p> <p>21 A. Because at that time, I was in contract</p> <p>22 marketing.</p>	<p style="text-align: right;">Page 201</p> <p>1 Q. Okay.</p> <p>2 A. I'm just saying that I had an Abbott</p> <p>3 Park e-mail address at this point, because this</p> <p>4 is May of 2000, correct?</p> <p>5 Q. Right.</p> <p>6 A. Okay.</p> <p>7 Q. So, you're -- I'm just trying to</p> <p>8 understand: So, you're just saying you don't</p> <p>9 know whether you received this or not?</p> <p>10 A. That's exactly what I'm saying.</p> <p>11 Q. Okay. Now, if you go to the original</p> <p>12 message, which starts about a third of the way</p> <p>13 down on Page 2, the message is also from May</p> <p>14 23rd, 2000, at 11:04 a.m., from Rob Cannon to</p> <p>15 Scott Glover.</p> <p>16 Do you see that?</p> <p>17 A. I'm sorry. Where are we at? It's just</p> <p>18 kind of hard to read this.</p> <p>19 Q. Sure.</p> <p>20 Page 2.</p> <p>21 A. Yes.</p> <p>22 Q. About a third of the way down?</p>

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<p>1 A. Okay.</p> <p>2 Q. It says, "Original message from Rob Cannon to Scott Glover," and it's got a time stamp of 11:04 a.m.?</p> <p>3 A. I do see that.</p> <p>4 Q. Okay. And this appears to be the original message in the chain.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And this is the message that was forwarded on, eventually, to a number of people; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And it says, "Scott, I've attached the new Federal and State Medicaid AWP prices that went into effect as of May 1st, 2000. This information was published in the May 2000 issue of INFUSION MAGAZINE on page 6."</p> <p>10 Did I read that accurately?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And it's the -- the magazine -- the article in the Infusion magazine that Mr.</p>	<p>1 Q. In the attached spread seat -- excuse me, "In the attached spreadsheet, there are 429 drugs. There are 100 Abbott drugs and 7 Gensia drugs that I've highlighted. When I was informed by my accounts of the situation, they stated" --</p> <p>2 "they stated that they were not told by the state or Federal government that this was going to happen."</p> <p>3 Did I read that accurately?</p> <p>4 A. Yes.</p> <p>5 Q. And then if you turn to the last page, towards the bottom, in the paragraph that starts, "We will have to monitor our sales in next few months to see if there is a drop in business because of certain Abbott drugs that have been effected by the decrease in Medicaid AWP's."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall learning, in about May 2000, about a decrease in Abbott's list prices?</p> <p>9 A. I do not.</p> <p>10 Q. Okay. Do you recall learning, at any</p>
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<p>1 Glover is talking about is titled, "AWP Back in the news."</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And it says, "State programs are slated to tighten Medicaid reimbursement made to physician and home health providers for drugs."</p> <p>5 Did I read that accurately?</p> <p>6 A. Yes.</p> <p>7 Q. And then the next paragraph down says, "Investigators allege that some pharmaceutical manufacturers deliberately set wholesale prices high in order to" attack -- "attract providers to their medications postulating that the providers could purchase the drug below average wholesale price and keep the difference."</p> <p>8 Did I read that accurately?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And then another paragraph down, it starts, "In the attached spreadsheet..."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p>	<p>1 time, that in about May 2000, there were Federal and state investigations into manufacturers' pricing --</p> <p>2 A. I do not.</p> <p>3 Q. -- practices?</p> <p>4 During this time, around May 2000, do you recall customers complaining about the change in Abbott's list prices?</p> <p>5 A. No, I do not.</p> <p>6 Q. Okay. Do you recall customers complaining about the change in AWP's on Abbott's products?</p> <p>7 A. No, I do not.</p> <p>8 Q. If you turn back to Page 1, to the last message in the chain, this is the one from January 18th, 2002, from Andy Crofoot to Dave Harling.</p> <p>9 Do you see that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Do you know Dave Harling?</p> <p>12 A. Yes. I do.</p> <p>13 Q. And have you worked with him in</p>

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<p>1 alternate site?</p> <p>2 A. Yes.</p> <p>3 Q. In what capacity?</p> <p>4 A. I replaced him in contract marketing.</p> <p>5 Q. Okay. Do you know where Mr. Harling</p> <p>6 went after that?</p> <p>7 A. To the East Coast to be a district</p> <p>8 manager.</p> <p>9 Q. Still for Abbott?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Are you in contact with him</p> <p>12 today?</p> <p>13 A. No, I'm not.</p> <p>14 Q. Okay. Do you know if he's still an</p> <p>15 Abbott employee?</p> <p>16 A. No, I do not.</p> <p>17 Q. Okay. In this message, Andy writes to</p> <p>18 Dave, "Dave, you may have" -- "have to dust off</p> <p>19 your memory banks and try to remember when we had</p> <p>20 that big change in our list price and everyone</p> <p>21 was complaining. I was telling you that we</p> <p>22 didn't change this on our own, Abbott was told to</p>	<p>1 A. Can I ask what this is?</p> <p>2 Q. Sure.</p> <p>3 It appears to be interoffice</p> <p>4 correspondence from Pete Karas to C. Begley dated</p> <p>5 November 5th, 2001.</p> <p>6 A. Okay.</p> <p>7 Q. Okay. Are you ready?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know who Peter Karas is?</p> <p>10 A. He was in senior management on the</p> <p>11 hospital products side --</p> <p>12 Q. Okay.</p> <p>13 A. -- of the business.</p> <p>14 Q. Okay. Did you understand that the</p> <p>15 alternate site product sales division reported up</p> <p>16 through Mr. Karas?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And I think -- if you could turn</p> <p>19 to Page 13.</p> <p>20 A. Yes.</p> <p>21 Q. And see there the heading at the top of</p> <p>22 the page, alternate -- "Alternate Site Product</p>
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<p>1 and I cited the e-mail that forewarned us about</p> <p>2 it. Not that it matters or anything, but I found</p> <p>3 it and am sending it to you. It's just an FYI."</p> <p>4 Did I read that accurately?</p> <p>5 A. Yes, you did.</p> <p>6 Q. Having reviewed both the original</p> <p>7 message and Mr. Crofoot's January 2002 message,</p> <p>8 does it refresh your recollection about events</p> <p>9 occurring in May of 2000 related to changes in</p> <p>10 Abbott's list price?</p> <p>11 MR. COLE: Object to the form.</p> <p>12 THE WITNESS: No. No.</p> <p>13 BY MS. FORD:</p> <p>14 Q. Okay. I'm going to hand you what has</p> <p>15 been previously marked as Exhibit Dawson 985.</p> <p>16 A. Thank you.</p> <p>17 Q. Mr. French, you're welcome to review</p> <p>18 the entire document, but I am going to be</p> <p>19 reference -- or, referring you to a particular</p> <p>20 paragraph on Page 13, if that helps you.</p> <p>21 A. Okay.</p> <p>22 Q. Just let me know when you're ready.</p>	<p>1 Sales"?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And then the fourth bullet point</p> <p>4 down says, "Coram Healthcare."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. It says, "Coram has moved some of their</p> <p>8 high runners, such as Vancomycin, away from</p> <p>9 Abbott APP."</p> <p>10 In the context that it's used here, do</p> <p>11 you know what -- what -- or, what does high</p> <p>12 runners mean to you in this context?</p> <p>13 MR. COLE: Object to the form.</p> <p>14 THE WITNESS: I don't know what that</p> <p>15 means.</p> <p>16 BY MS. FORD:</p> <p>17 Q. Okay. Is that a term that you heard</p> <p>18 when you were in alternate site --</p> <p>19 A. No.</p> <p>20 Q. -- as a sales rep?</p> <p>21 A. No. I don't recall that.</p> <p>22 Q. Okay. And in contract marketing, you</p>

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<p>1 didn't hear someone refer to a product as a high 2 runner?</p> <p>3 A. No.</p> <p>4 Q. Okay. The next sentence says, "We are 5 starting to see the results of this move. Coram 6 was purchasing 800,000 annually of Vanco. Their 7 purchases for the past quarter are 200,000 short 8 of their running rate. They have indicated that 9 this was due to our list price changes."</p> <p>10 Did I read that accurately?</p> <p>11 A. Yes, you did.</p> <p>12 Q. Do you recall, in May 2000, hearing -- 13 May 2000 or after, hearing about alternate site 14 customers switching to other manufacturers due to 15 the -- Abbott's list price changes?</p> <p>16 A. No.</p> <p>17 Q. Okay. Did you ever receive any verbal 18 instruction from anyone at Abbott not to discuss 19 average wholesale price information with Abbott 20 customers?</p> <p>21 A. I don't recall.</p> <p>22 Q. Okay. You don't recall one way or the</p>	<p>1 discussions with any of your alternate site sales 2 rep colleagues about reimbursement issues?</p> <p>3 A. No.</p> <p>4 Q. And how about average wholesale price?</p> <p>5 A. No.</p> <p>6 Q. Now, earlier when we were referencing 7 Exhibit French 1378, this spreadsheet, it has a 8 column for AWP and dollar dif AWP?</p> <p>9 A. Yes.</p> <p>10 Q. You indicated that you don't recall, at 11 least for this spreadsheet, calculating the AWP 12 based on Abbott's list price; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. Do you ever recall an occasion where 15 you were calculating or estimating AWP for an 16 Abbott product?</p> <p>17 A. No.</p> <p>18 Q. Okay. When you were putting together 19 this Exhibit French 1378, do you recall having 20 any discussions with any other contract marketing 21 analyst about the purpose for AWP being included?</p> <p>22 A. No.</p>
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<p>1 other?</p> <p>2 A. One way or the other.</p> <p>3 Q. Okay. Do you recall receiving any 4 written instruction not to discuss AWP 5 information with customers?</p> <p>6 A. I don't recall one way or the other.</p> <p>7 Q. Okay. Do you recall receiving any 8 written or verbal instruction from Abbott not to 9 discuss reimbursement with customers?</p> <p>10 A. I don't recall that, either.</p> <p>11 Q. You don't recall receiving any 12 instruction on that subject?</p> <p>13 A. Correct.</p> <p>14 Q. Okay.</p> <p>15 A. Either way.</p> <p>16 Q. Okay. Do you ever recall hearing that 17 it was improper to market an Abbott product based 18 on the AWP for that product?</p> <p>19 A. I don't recall.</p> <p>20 Q. You don't recall ever hearing that?</p> <p>21 A. I don't recall hearing that.</p> <p>22 Q. Okay. Did you ever have any</p>	<p>1 Q. And what about conversations with the 2 contract marketing manager, Ms. Leone?</p> <p>3 A. No.</p> <p>4 Q. And we see here that -- we've 5 established, I think earlier, that the dollar 6 difference AWP column is the result of taking the 7 AWP and subtracting the contract price; is that 8 right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Have you ever heard of that 11 number, the difference between contract price and 12 AWP, being referred to as the "spread"?</p> <p>13 A. No.</p> <p>14 Q. During your time in alternate site, did 15 you hear people use the term "spread"?</p> <p>16 A. No.</p> <p>17 Q. Did you hear any of your colleagues 18 refer to any terms to discuss the difference 19 between what a customer would pay, or the 20 contract price, and the AWP?</p> <p>21 A. I don't recall anybody saying that.</p> <p>22 Q. Did you understand that the difference</p>

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<p>1 between the contract price and the AWP was 2 information that was important to at least some 3 Abbott customers? 4 A. No, I did not understand that. 5 Q. Okay. You have no knowledge of that 6 one way or the other? 7 A. Correct. 8 Q. Okay. We've talked, at some points 9 today, about the various types of documents that 10 you created in your positions in Abbott, first in 11 -- as a sales rep and then as a -- in contract 12 marketing. 13 Did you ever receive -- at any time 14 during your employment with Abbott, have you ever 15 received notification to preserve documents in 16 your possession? 17 A. Yes. 18 Q. And when was that? 19 A. It was -- I don't know the exact year, 20 but it was in my position as an anesthesia 21 specialist. 22 Q. Okay. And I believe earlier you said</p>	<p>1 rep, you had your own home computer; is that 2 right? 3 A. Yes. 4 Q. And then at some point, the hard drive 5 on that computer failed and you threw it away; is 6 that -- 7 A. Correct. 8 Q. Okay. And then as an alternate site 9 contract marketing analyst, you actually had an 10 Abbott issued computer; is that right? 11 A. Correct. 12 Q. And when you left the job, you left the 13 computer there? 14 A. Correct. 15 Q. Okay. And you didn't take any of the 16 computer files with you to your next position; is 17 that right? 18 A. Only my personal files, like vacation 19 time -- 20 Q. Okay. 21 A. -- and things of that nature. 22 Q. Okay.</p>
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<p>1 that would have been between June of 2001 and 2 December of 2006; is that right? 3 A. Yes. That is correct. 4 Q. Okay. And do you know what that 5 preservation request was related to? 6 A. Yes. One of our products. 7 Q. And which product was that? 8 A. Oxycontin. 9 Q. Okay. And did you understand that to 10 be in relationship to a lawsuit or investigation 11 related to Oxycontin? 12 A. I'm not sure at that point what it was 13 for. 14 Q. Okay. Did you ever receive any notice 15 to preserve documents related to average 16 wholesale price litigation that Abbott is engaged 17 in? 18 A. No. 19 Q. Okay. And I believe you testified 20 earlier that when you moved from one job to 21 another -- well, let me -- let me back up. 22 When you were an alternate site sales</p>	<p>1 A. That I did take. 2 Q. And that would have been true for both 3 the hard copy files and the computer files? 4 A. Yes. 5 Q. Okay. So, if it was related to your 6 accounts, you would have left it in contract 7 marketing? 8 A. Yes. 9 Q. And things like significant events 10 reports, you just left on the computer or you 11 deleted them; is that right? 12 A. Correct. 13 Q. Okay. When you were an alternate site 14 sales rep, do you recall being notified, or -- or 15 learning in any way, of a civil investigative 16 demand that was issued to Abbott by the 17 Department of Health and Human Services' 18 Inspector General? 19 A. No. 20 Q. And do you recall learning about 21 subpoenas issued to Abbott by the United States 22 Department of Health and Human Services?</p>

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<p>1 A. No.</p> <p>2 Q. Okay. I have just a few more exhibits</p> <p>3 to show you.</p> <p>4 A. Okay.</p> <p>5 Q. This one we'll mark as Exhibit French</p> <p>6 1385.</p> <p>7 (Deposition Exhibit French 1385</p> <p>8 marked for identification and is annexed hereto.)</p> <p>9 THE WITNESS: Thank you.</p> <p>10 BY MS. FORD:</p> <p>11 Q. And for the record, this is ABT DOJ</p> <p>12 0184423.</p> <p>13 Mr. French, does this appear to be an</p> <p>14 e-mail from you to Pat Glas dated December 20th,</p> <p>15 2000?</p> <p>16 A. Yeah.</p> <p>17 Can I have just a second to --</p> <p>18 Q. Uh-huh.</p> <p>19 A. -- look through this?</p> <p>20 Yes. This is from -- if you're asking</p> <p>21 was this from me to Pat Glas, yes.</p> <p>22 Q. Okay. And it's an e-mail dated</p>	<p>1 of the year. The first one is Ball Home</p> <p>2 Infusion. The second one is Sacred Heart Home</p> <p>3 Care."</p> <p>4 Did I read that accurately?</p> <p>5 A. Yes, you did.</p> <p>6 Q. Okay. Do you recall why these accounts</p> <p>7 were being transferred from home infusion to</p> <p>8 alternate site?</p> <p>9 A. Why they were being moved over?</p> <p>10 Q. Uh-huh.</p> <p>11 A. No.</p> <p>12 Q. Okay. Do you recall transitioning</p> <p>13 other accounts at that time?</p> <p>14 A. Yes.</p> <p>15 Q. And do you recall -- I guess, how many</p> <p>16 other accounts do you recall transitioning?</p> <p>17 A. I don't remember the exact number.</p> <p>18 Q. Okay. Was home infusion, was that</p> <p>19 business unit closing at the time?</p> <p>20 A. I don't know -- I don't know if it was</p> <p>21 closing, but the -- these accounts were</p> <p>22 transitioning over.</p>
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<p>1 December 20th, 2000, right?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And at that time, you were an</p> <p>4 alternate site contract marketing analyst; is</p> <p>5 that right?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. And what was -- where did Pat</p> <p>8 Glas work?</p> <p>9 A. Alternate site product sales, contract</p> <p>10 marketing.</p> <p>11 Q. She was in contract marketing as well?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And what was her position?</p> <p>14 A. If my memory serves me correct, she was</p> <p>15 a coordinator.</p> <p>16 Q. Okay. So, in that role, she provided</p> <p>17 administrative assistance and data entry for</p> <p>18 contract analysts and the manager; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And you write to -- you write to</p> <p>21 Pat here, "Pat, we have two accounts to</p> <p>22 transition over to alternate site before the end</p>	<p>1 Q. Okay. If you don't recall the reason</p> <p>2 for the specific accounts being converted over,</p> <p>3 do you recall more generally why accounts were</p> <p>4 being converted or transitioned from -- from home</p> <p>5 infusion to alternate site?</p> <p>6 A. No.</p> <p>7 Q. And what did -- what did transitioning</p> <p>8 an account from home infusion to alternate site</p> <p>9 involve?</p> <p>10 A. From looking at this document, and from</p> <p>11 what I recall, is we needed to create information</p> <p>12 for these accounts in our system, because they</p> <p>13 weren't currently in our system. So, if they had</p> <p>14 a pump in the home infusion system, we had to</p> <p>15 create a pump profile in our system.</p> <p>16 And it appears that's what I'm doing</p> <p>17 right here, is just, you know, we need to create</p> <p>18 this information in our system so we can track</p> <p>19 these accounts.</p> <p>20 Q. Did you understand that these accounts</p> <p>21 were being moved in their entirety from home</p> <p>22 infusion to then become an alternate site</p>

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<p style="text-align: right;">Page 222</p> <p>1 account?</p> <p>2 A. Yes. That's my understanding from</p> <p>3 looking at this, yes.</p> <p>4 Q. Okay. At the bottom of the page,</p> <p>5 there's a handwritten note. It says, "Eric,</p> <p>6 looking good. I ran an INET report. It</p> <p>7 matches."</p> <p>8 Did I read that accurately?</p> <p>9 A. Yes.</p> <p>10 Q. What is an INET report?</p> <p>11 A. I don't remember what that is.</p> <p>12 Q. Okay. Do you -- do you believe INET</p> <p>13 stands for something?</p> <p>14 A. I don't know.</p> <p>15 Q. Is it an acronym?</p> <p>16 A. I don't know.</p> <p>17 Q. Okay. So, today, sitting here today,</p> <p>18 you don't have any recollection about what INET -</p> <p>19 -</p> <p>20 A. No.</p> <p>21 Q. -- is? Okay.</p> <p>22 MS. FORD: Okay. I don't have any</p>	<p style="text-align: right;">Page 224</p> <p>1 BY MS. NESBITT:</p> <p>2 Q. But, Mr. French, my name is Amber</p> <p>3 Nesbitt. I represent the state of Arizona and</p> <p>4 the MDL Plaintiffs, and I have a very few</p> <p>5 questions for you.</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. Going back to Exhibit French 1387, this</p> <p>8 -- and I don't have the exact exhibit in front of</p> <p>9 me, but I believe I have a very similar one.</p> <p>10 Is this a 2000 spreadsheet that was</p> <p>11 sent to GeriMed?</p> <p>12 MR. COLE: If you could just give us a</p> <p>13 second, Amber, while --</p> <p>14 MS. NESBITT: Sure.</p> <p>15 MR. COLE: -- we can pull it and --</p> <p>16 MS. FORD: I --</p> <p>17 MR. COLE: -- get it in front of Mr.</p> <p>18 French.</p> <p>19 MS. FORD: I believe it's Exhibit</p> <p>20 French 1378.</p> <p>21 MS. NESBITT: Oh, I'm sorry. Exhibit</p> <p>22 French 1378.</p>
<p style="text-align: right;">Page 223</p> <p>1 further questions at this time, but I just would</p> <p>2 like to state that Abbott's document production</p> <p>3 is continuing in this case and, therefore, we</p> <p>4 reserve the right to recall Mr. French should</p> <p>5 additional documents warrant it.</p> <p>6 So, I'll pass the witness.</p> <p>7 MR. COLE: Does anyone on the -- on the</p> <p>8 phone have questions for Mr. French?</p> <p>9 MS. NESBITT: I do, actually, have a</p> <p>10 few questions.</p> <p>11 MR. COLE: Amber, before you get</p> <p>12 started, let me just get our usual objection on</p> <p>13 the record.</p> <p>14 Abbott objects to the presence of -- of</p> <p>15 MDL Plaintiffs' counsel at the deposition and any</p> <p>16 use of the testimony or information contained in</p> <p>17 the deposition today on the basis that discovery</p> <p>18 in that matter is closed.</p> <p>19 MS. NESBITT: Okay. We have our</p> <p>20 standard disagreement.</p> <p>21</p> <p>22 EXAMINATION</p>	<p style="text-align: right;">Page 225</p> <p>1 BY MS. NESBITT:</p> <p>2 Q. The one that you've been questioned on</p> <p>3 at length today.</p> <p>4 MS. FORD: Right. We don't have a 1387</p> <p>5 yet, so I think it's --</p> <p>6 MS. NESBITT: Okay.</p> <p>7 MS. FORD: -- Exhibit French 1378.</p> <p>8 THE WITNESS: Yes. I have it.</p> <p>9 BY MS. NESBITT:</p> <p>10 Q. Okay. And is this a document that was</p> <p>11 sent to GeriMed by you?</p> <p>12 A. Yes. According to the cover letter,</p> <p>13 yes.</p> <p>14 Q. Okay. Do you recall sending similar</p> <p>15 spreadsheets to other clients?</p> <p>16 A. No, I do not.</p> <p>17 Q. Okay. Is that because -- do you -- do</p> <p>18 you have a specific recollection of not sending,</p> <p>19 or you just don't recall?</p> <p>20 A. I don't --</p> <p>21 MR. COLE: Object to the form.</p> <p>22 MS. NESBITT: Okay.</p>

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<p style="text-align: right;">Page 226</p> <p>1 THE WITNESS: I don't recall. 2 BY MS. NESBITT: 3 Q. Okay. Do you know if other contract 4 marketing analysts sent similar documents to 5 their customers? 6 A. I don't know. 7 Q. Do you recall having any discussions 8 with any of them about similar spreadsheets or 9 documents? 10 A. I don't recall. 11 Q. Okay. And during this time, as -- when 12 you were a contract marketing analyst, I believe 13 you testified that Lynn Leone was your boss? 14 A. Yes. 15 Q. Is that correct? Okay. 16 Did she ever review documents that you 17 sent to customers? 18 A. Yes. 19 Q. Do you recall if she reviewed this 20 document that you sent to GeriMed? 21 A. I don't -- I don't recall if she 22 reviewed this specific document.</p>	<p style="text-align: right;">Page 228</p> <p>1 Q. Okay. And when discussing those 2 accounts with your -- with those customers, did 3 you ever discuss reimbursement by Medicare or 4 Medicaid? 5 A. No, sir. 6 Q. Okay. Was reimbursement by Medicare or 7 Medicaid ever discussed with any -- any of your 8 customers by you? 9 A. No, sir. 10 Q. Was the reimbursement differential, 11 which appears on that document, Exhibit French 12 1378, ever discussed with customers by you? 13 A. No, sir. 14 Q. Okay. And GeriMed had members. I 15 guess the -- the documents that I've looked at, 16 they refer to them as members, which would be 17 pharmacies and that sort of thing. 18 You're aware of that, right? 19 A. Yes, sir. 20 Q. Okay. And did you ever have any 21 contact directly with those members? 22 MR. COLE: I'll -- I'll object to the</p>
<p style="text-align: right;">Page 227</p> <p>1 Q. Okay. Do you recall her ever reviewing 2 a document where you had AWP information and the 3 dollar difference AWP information provided to 4 customers? 5 A. I don't recall. 6 Q. Is that because -- is that -- you don't 7 recall it happening, or you don't recall -- well, 8 strike that. 9 MS. NESBITT: I believe that's all I 10 have. 11 MR. COLE: Tim, what about you? 12 MR. FOOTE: Yeah. This is Tim Foote, 13 Deputy Attorney General, California. I just have 14 a couple of questions. 15 16 EXAMINATION 17 BY MR. FOOTE: 18 Q. Mr. French, while you were working in 19 sales, did you ever acquire any new accounts? 20 A. Yes. 21 Q. Do you recall which ones those were? 22 A. No, sir.</p>	<p style="text-align: right;">Page 229</p> <p>1 form. 2 BY MR. FOOTE: 3 Q. Do you want me to reask the question or 4 -- 5 A. Yeah. I'm -- I'm just not -- I'm just 6 not sure how to answer it. 7 Q. Did you ever have any contacts directly 8 with the member, the provider members, of 9 GeriMed, or RxMed, or IVMed? 10 A. I'm not sure. 11 Q. Okay. And the prices on -- back to 12 document Exhibit French 1378 -- the prices that -- 13 - the contract prices, the prices that the -- 14 that -- that GeriMed paid for the -- for those -- 15 those pharmaceuticals, where -- where did those 16 prices come from? 17 A. Where -- go ahead. 18 MR. COLE: I'll just object. Object to 19 the form. 20 MR. FOOTE: I'm sorry. I didn't hear 21 your answer. 22 What?</p>

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<p style="text-align: right;">Page 230</p> <p>1 MR. COLE: I just -- I just inserted an 2 objection to the form of the question. 3 Can you read the question back? 4 MR. FOOTE: I -- I -- I mean, Mr. 5 French -- 6 What's your answer, Mr. French? 7 MR. COLE: Could you read the question 8 again, so he -- 9 MR. FOOTE: I can repeat the question, 10 if you want. 11 MR. COLE: Sure. That would be great. 12 Thank you. 13 BY MR. FOOTE: 14 Q. Okay. On document Exhibit French 1378, 15 I believe it's the second page and then below, 16 there is -- there are prices that are the 17 customer -- they appear to be the customer prices 18 that GeriMed would pay, the contract prices for 19 GeriMed. 20 Where did those prices come from? 21 A. Those prices came from the analysis I 22 did of their contract and the provision in there</p>	<p style="text-align: right;">Page 232</p> <p>1 Do you recall that? 2 A. The question? 3 Q. Yes. 4 A. Yes. 5 Q. And I believe you stated that -- that 6 you don't know, you didn't recall if she reviewed 7 this particular spreadsheet; is that right? 8 A. Yes. 9 Q. In sending out pricing to Abbott 10 customers, did you -- did it routinely require 11 that you get the okay from the alternate site 12 contract marketing manager? 13 A. Yes. 14 Q. Okay. So, in the normal course of 15 business, Ms. Leone, or whoever the manager was 16 at that time, would have reviewed spreadsheets 17 such as this that were going out to customers; is 18 that right? 19 A. Yes. 20 Q. Okay. And Ms. Nesbitt also asked you 21 whether other alternate site contract marketing 22 analysts sent out similar spreadsheets to</p>
<p style="text-align: right;">Page 231</p> <p>1 for price increases from year to year. 2 Q. Okay. And do you have any documents, 3 notes, or anything, regarding your analysis of 4 those prices? 5 A. No, sir. 6 Q. Okay. Was there a computerized pricing 7 file that you used? 8 A. Yes, sir. 9 Q. And what's the formal name of that 10 file? Do you know? 11 A. No, sir. 12 MR. FOOTE: Okay. I don't have any 13 further questions. 14 MS. FORD: I have just a few follow-up 15 questions. 16 MR. COLE: Okay. 17 18 RE-EXAMINATION 19 BY MS. FORD: 20 Q. Still looking at Exhibit French 1378, 21 Ms. Nesbitt asked you whether Lynn Leone would 22 have approved the -- the prices here.</p>	<p style="text-align: right;">Page 233</p> <p>1 customers. 2 Do you recall that question? 3 A. Yes. 4 Q. And you said you didn't know; is that 5 right? 6 A. Yes. 7 Q. Okay. But, in fact, we've seen today 8 at least two examples where Mr. Moore sent out 9 almost identical spreadsheets to customers; is 10 that right? 11 A. Yes. 12 Q. And so, you're not denying that -- that 13 you've seen those and that they appear to be 14 similar communications, similar analyses, being 15 sent by alternate site contract marketing 16 personnel; is that right? 17 A. I've seen the one Scott sent and the 18 one I sent, yes. 19 Q. And we've actually seen two that Mr. 20 Moore sent, right? 21 One from 2000, which is Exhibit French 22 1384, and one from 1999, which is Exhibit French</p>

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<p style="text-align: right;">Page 234</p> <p>1 1383; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So, you know that at least that</p> <p>4 yourself and Mr. Moore sent out these types of</p> <p>5 analyses to Abbott customers; is that right?</p> <p>6 A. No.</p> <p>7 Q. You don't know that?</p> <p>8 A. No. That we sent it to this customer,</p> <p>9 not Abbott customers. I only know that --</p> <p>10 Q. Okay.</p> <p>11 A. -- it went to this particular customer.</p> <p>12 Q. Well, there are actually two -- at</p> <p>13 least two customers here, right?</p> <p>14 A. I thought it was the same one. I'm</p> <p>15 sorry if I made that mistake.</p> <p>16 Q. That's okay.</p> <p>17 With respect to Exhibit French 1384,</p> <p>18 Mr. Moore is sending an analysis to RxMed, and</p> <p>19 Exhibit French 1383 and Exhibit French 1378 are</p> <p>20 being sent to GeriMed; is that right?</p> <p>21 A. Yes.</p> <p>22 MS. FORD: Okay. No further questions</p>	<p style="text-align: right;">Page 236</p> <p>1 A. Yes.</p> <p>2 Q. Do you remember those questions?</p> <p>3 A. Yes.</p> <p>4 Q. And -- and just so the record is clear,</p> <p>5 you did not create the format -- I'll rephrase</p> <p>6 it.</p> <p>7 Did you create the format or structure</p> <p>8 of the document attached to or enclosed with the</p> <p>9 cover letter in Exhibit French 1378?</p> <p>10 A. No, I did not.</p> <p>11 Q. And did you generate or create the</p> <p>12 column headings that are contained in the</p> <p>13 attachment to Exhibit French 1378?</p> <p>14 A. No, I did not.</p> <p>15 Q. And do you know whether anyone at</p> <p>16 Abbott created the structure or format of the</p> <p>17 enclosure contained in Exhibit French 1378?</p> <p>18 A. No, I don't.</p> <p>19 Q. And do you know whether anyone at</p> <p>20 Abbott created the column headings that are</p> <p>21 indicated in the attachment to Exhibit French</p> <p>22 1378?</p>
<p style="text-align: right;">Page 235</p> <p>1 at this time.</p> <p>2 MR. COLE: Why don't we take a break</p> <p>3 for five minutes. I don't know if I'm going to</p> <p>4 have any questions or not. And then we can come</p> <p>5 back and reconvene and either adjourn or I'll ask</p> <p>6 a few questions and -- and then we can adjourn.</p> <p>7 MS. FORD: Okay.</p> <p>8 THE VIDEOGRAPHER: We'll go off the</p> <p>9 record at 12:59 p.m.</p> <p>10 (There was a brief recess.)</p> <p>11 THE VIDEOGRAPHER: We are back on the</p> <p>12 record at 1:16 p.m.</p> <p>13</p> <p>14 EXAMINATION</p> <p>15 BY MR. COLE:</p> <p>16 Q. Okay.</p> <p>17 A. Thank you.</p> <p>18 Q. Mr. French, I want to ask you just a</p> <p>19 couple of questions about Exhibit French 1378.</p> <p>20 And do -- do you remember Ms. -- Ms.</p> <p>21 Ford and I believe Ms. Nesbitt and Mr. Foote</p> <p>22 asked you some questions about this document?</p>	<p style="text-align: right;">Page 237</p> <p>1 A. No, I do not.</p> <p>2 Q. Ms. Ford asked you some questions about</p> <p>3 documents that were -- that you had created on</p> <p>4 your home computer while you were an alt site</p> <p>5 product sales rep.</p> <p>6 Do you remember those questions?</p> <p>7 A. Yes.</p> <p>8 Q. And I believe your testimony was that</p> <p>9 you -- if there were any documents that you</p> <p>10 created on your computer that related to a</p> <p>11 specific account or customer, that you printed</p> <p>12 that document off and put it in a hard copy file;</p> <p>13 is that right?</p> <p>14 A. Yes.</p> <p>15 Q. And to the extent there were any</p> <p>16 significant event reports on your home computer -</p> <p>17 - let me back up.</p> <p>18 Were the significant event reports</p> <p>19 summaries of the activity on your -- your various</p> <p>20 customers and accounts?</p> <p>21 A. Yes.</p> <p>22 MS. FORD: Object to form.</p>

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<p style="text-align: right;">Page 238</p> <p>1 BY MR. COLE:</p> <p>2 Q. And is all of the information contained</p> <p>3 -- would all of the information contained in your</p> <p>4 significant event reports be contained in other</p> <p>5 documents that were present in the paper files</p> <p>6 for your various customers?</p> <p>7 MS. FORD: Object to form.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. COLE:</p> <p>10 Q. And when you prepared those significant</p> <p>11 event reports, you -- you actually sent them to</p> <p>12 your supervisor, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And so, your supervisor, then, would</p> <p>15 also have a copy of the various significant event</p> <p>16 reports that you prepared over time as a sales</p> <p>17 rep in alt site product sales, right?</p> <p>18 A. Yes.</p> <p>19 Q. And moving forward to your job in</p> <p>20 contract marketing, Ms. Ford asked you some</p> <p>21 questions about, you know, the documents that</p> <p>22 were on your -- your desktop computer while you</p>	<p style="text-align: right;">Page 240</p> <p>1 be reflected in some way in the customer files</p> <p>2 that you kept, either on your computer or in a --</p> <p>3 in a hard copy file?</p> <p>4 MS. FORD: Object to form.</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MR. COLE:</p> <p>7 Q. And again, when you were in contract</p> <p>8 marketing, any significant event report that you</p> <p>9 created, you would have sent to your supervisor</p> <p>10 at the time, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And lastly, Ms. Ford asked you a</p> <p>13 question, asked you some questions about AWP and</p> <p>14 your understanding of AWP.</p> <p>15 Do you remember those questions?</p> <p>16 A. Yes.</p> <p>17 Q. And I believe in one of your answers,</p> <p>18 you said something about your understanding or</p> <p>19 your -- your -- your personal understanding of --</p> <p>20 of the term was that it was an average of</p> <p>21 wholesale prices.</p> <p>22 Do you know that to be true?</p>
<p style="text-align: right;">Page 239</p> <p>1 worked in contract marketing.</p> <p>2 Do you remember those questions?</p> <p>3 A. Yes.</p> <p>4 Q. And any -- and I believe your testimony</p> <p>5 was that any files or documents related to a</p> <p>6 specific customer, you either left on your</p> <p>7 computer or left in a hard copy file when you</p> <p>8 left your job in contract marketing; is that</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. And again, any significant event</p> <p>12 reports that you created while you were an</p> <p>13 employee in contract marketing, were those</p> <p>14 summaries of the various contracts or customers</p> <p>15 that you worked on at the time you were in</p> <p>16 contract marketing?</p> <p>17 A. Yes.</p> <p>18 MS. FORD: Object to form.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. COLE:</p> <p>21 Q. And would all of the information</p> <p>22 contained in those significant event reports also</p>	<p style="text-align: right;">Page 241</p> <p>1 A. No.</p> <p>2 MS. FORD: Object to form.</p> <p>3 BY MR. COLE:</p> <p>4 Q. Okay. So, were you guessing or</p> <p>5 speculating as to the -- as to the definition of</p> <p>6 AWP when you answered that question?</p> <p>7 A. I was guessing to what the words meant,</p> <p>8 yes.</p> <p>9 Q. Okay.</p> <p>10 MS. FORD: Object to form.</p> <p>11 MR. COLE: That's all I have.</p> <p>12 MS. FORD: One or two follow-up</p> <p>13 questions.</p> <p>14</p> <p>15 RE-EXAMINATION</p> <p>16 BY MS. FORD:</p> <p>17 Q. With respect to -- Mr. French, with</p> <p>18 respect to the documents that Mr. Cole was asking</p> <p>19 you about, that you would have created when you</p> <p>20 were an alternate site sales rep and then, later,</p> <p>21 in contract marketing, that would have been in</p> <p>22 the files, your hard copy files -- do you recall</p>

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<p style="text-align: right;">Page 242</p> <p>1 that line of questioning?</p> <p>2 A. Yes.</p> <p>3 Q. With respect to those -- for example,</p> <p>4 with respect to the customers that you had in</p> <p>5 alternate site, would you have had cover letter</p> <p>6 correspondence with your -- with your accounts?</p> <p>7 A. Yes.</p> <p>8 Q. And what other types of documents would</p> <p>9 have been maintained in those hard copy files?</p> <p>10 A. Anything pertaining to that account.</p> <p>11 So, I'm not sure. Examples of what --</p> <p>12 Q. Sure.</p> <p>13 A. -- would be in there?</p> <p>14 Previous contracts would be in there.</p> <p>15 For example, any correspondence that I might have</p> <p>16 received from a representative about their</p> <p>17 account would be in there. Any spreadsheets that</p> <p>18 were printed out would be in there. That's what</p> <p>19 would be in those files.</p> <p>20 Q. Okay. And did you, from time to time,</p> <p>21 send information to your accounts?</p> <p>22 Either electronically or via mail, did</p>	<p style="text-align: right;">Page 244</p> <p>1 here today for GeriMed?</p> <p>2 A. Yes. That's what I'm thinking of right</p> <p>3 now, the one you just showed me earlier today,</p> <p>4 yes.</p> <p>5 Q. Okay. So, for the other accounts that</p> <p>6 you had responsibility for, there would have been</p> <p>7 similar cover letters providing things such as</p> <p>8 the spreadsheet that we've been looking at,</p> <p>9 Exhibit French 1378 --</p> <p>10 A. Yes.</p> <p>11 Q. -- is that right?</p> <p>12 And other cover letters that we saw</p> <p>13 today providing price lists?</p> <p>14 A. For?</p> <p>15 Q. Or member lists?</p> <p>16 A. Can you restate the question?</p> <p>17 Q. Sure.</p> <p>18 A. I want to make sure I answer it</p> <p>19 correctly.</p> <p>20 Q. Uh-huh.</p> <p>21 I'm just trying to figure out: You</p> <p>22 would have -- you would have sent your other</p>
<p style="text-align: right;">Page 243</p> <p>1 you send them information?</p> <p>2 A. Directly to the accounts or --</p> <p>3 Q. Yes.</p> <p>4 A. Yes.</p> <p>5 Q. When you were a sales rep?</p> <p>6 A. Oh, I'm sorry. I -- which --</p> <p>7 Q. When you were a sales rep, did you send</p> <p>8 any information to the accounts that you dealt</p> <p>9 with?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And would you have included some</p> <p>12 type of cover letter or some information that</p> <p>13 would have identified you as the provider of the</p> <p>14 document?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And would the same be true</p> <p>17 during the time that you were in alternate site</p> <p>18 contract marketing?</p> <p>19 Did you send information out to</p> <p>20 accounts?</p> <p>21 A. Yes.</p> <p>22 Q. Such as the cover letters we've seen</p>	<p style="text-align: right;">Page 245</p> <p>1 accounts, aside from GeriMed, but we've seen</p> <p>2 today examples of you sending information to one</p> <p>3 of the meds, I'll get it here, with a list of</p> <p>4 killed products.</p> <p>5 Do you remember that cover letter?</p> <p>6 A. Yes. Yes.</p> <p>7 Q. So, you would have had other types of</p> <p>8 correspondence --</p> <p>9 A. Yes.</p> <p>10 Q. -- with these accounts?</p> <p>11 A. Yes.</p> <p>12 Q. And you would have sent them a cover</p> <p>13 letter which you would have signed?</p> <p>14 A. Yes.</p> <p>15 Q. Or some other type of indication that</p> <p>16 was tying you as being the provider of the</p> <p>17 information; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And that would have covered the</p> <p>20 periods from 1997 to 2000 when you were a field</p> <p>21 sales rep; is that right?</p> <p>22 A. Yes.</p>

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<p style="text-align: right;">Page 246</p> <p>1 Q. And then from about April of 2000 to</p> <p>2 June of 2001, when you were a contract marketing</p> <p>3 analyst; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. So, during that time period, if</p> <p>6 we were to have your files with us today for all</p> <p>7 of the accounts that you worked on during 1997 to</p> <p>8 2001, you would expect us to find cover letters</p> <p>9 with your name on it to the accounts that you had</p> <p>10 responsibility for during this time period; is</p> <p>11 that right?</p> <p>12 MR. COLE: Object to the form.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MS. FORD:</p> <p>15 Q. Okay. And other information that you</p> <p>16 would be providing, such as the spreadsheets and</p> <p>17 price list, member list, and so forth; is that</p> <p>18 right?</p> <p>19 A. I'm not sure as to what would actually</p> <p>20 be in there, so --</p> <p>21 Q. But the type of documents that you</p> <p>22 testified that would have been in your files?</p>	<p style="text-align: right;">Page 248</p> <p>1 job after you, both in sales and in contract</p> <p>2 marketing, why those documents wouldn't have been</p> <p>3 produced to the United States?</p> <p>4 MR. COLE: Objection.</p> <p>5 BY MS. FORD:</p> <p>6 Q. Do you have any reason to know -- do</p> <p>7 you know -- know why?</p> <p>8 MR. COLE: Object to the form.</p> <p>9 THE WITNESS: No, I don't know why.</p> <p>10 BY MS. FORD:</p> <p>11 Q. Okay. So, as far as you know, they</p> <p>12 existed, and you maintained them and you passed</p> <p>13 them along to whoever took the job after you; is</p> <p>14 that right?</p> <p>15 A. Yes.</p> <p>16 MS. FORD: Okay. No further questions.</p> <p>17 MR. COLE: I don't have any other</p> <p>18 questions.</p> <p>19 MS. NESBITT: No further questions.</p> <p>20</p> <p>21 RE-EXAMINATION</p> <p>22 BY MR. FOOTE:</p>
<p style="text-align: right;">Page 247</p> <p>1 A. Yes. Yes.</p> <p>2 Q. Okay.</p> <p>3 A. Yes.</p> <p>4 Q. So, we would know, for example, when we</p> <p>5 were looking at a customer file, the time period</p> <p>6 when you were responsible for that account</p> <p>7 because we would see correspondence between you</p> <p>8 and that account; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. But you don't recall at any time</p> <p>11 being asked to preserve those documents or</p> <p>12 providing them to anyone within Abbott's legal</p> <p>13 department, do you?</p> <p>14 A. No. I've never been asked to give it</p> <p>15 to the legal department, no.</p> <p>16 Q. Okay. And you're not aware of any fire</p> <p>17 or any other incident which would have destroyed</p> <p>18 those documents, are you?</p> <p>19 A. No.</p> <p>20 Q. Okay. So, can you think of any reason</p> <p>21 why, if you've maintained those documents and</p> <p>22 passed them on to the person that took over the</p>	<p style="text-align: right;">Page 249</p> <p>1 Q. Mr. French?</p> <p>2 A. Yes.</p> <p>3 Q. When we were discussing the -- the</p> <p>4 Exhibit French 1378 again, previously, you</p> <p>5 indicated that the contract price line, well, it</p> <p>6 was something you calculated.</p> <p>7 How did you -- how did you go about</p> <p>8 calculating that?</p> <p>9 A. Well, to what I remember, each -- each</p> <p>10 contract had a provision in it where we could</p> <p>11 increase the price of the products on a yearly</p> <p>12 basis. And let's say we could increase up to</p> <p>13 five percent on each account. At the directive</p> <p>14 of my manager, she would tell us where an account</p> <p>15 needed to land -- land on their price increase.</p> <p>16 So, for this anniversary, the prices</p> <p>17 need to increase by two percent, and then I would</p> <p>18 adjust the prices accordingly.</p> <p>19 Q. Okay. And then the original price came</p> <p>20 from a computerized price list; is that correct?</p> <p>21 A. Yes.</p> <p>22 MR. FOOTE: Okay. Nothing further.</p>

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<p style="text-align: right;">Page 250</p> <p>1 MS. FORD: No. I'll pass --</p> <p>2 MR. COLE: You looked like you were</p> <p>3 going to ask.</p> <p>4 MS. FORD: No. I'll pass the witness.</p> <p>5 MR. COLE: Okay. I have no more</p> <p>6 questions. Think we're adjourned.</p> <p>7 MS. FORD: Again, the United States</p> <p>8 resumes -- or, reserves its right to recall Mr.</p> <p>9 French should additional documents being produced</p> <p>10 in this case warrant it.</p> <p>11 MR. COLE: Okay.</p> <p>12 MR. FOOTE: California makes the same</p> <p>13 motion to -- for right to recall.</p> <p>14 MS. NESBITT: And Arizona and MDL joins</p> <p>15 in.</p> <p>16 MR. COLE: Okay. Thanks, guys.</p> <p>17 THE VIDEOGRAPHER: We'll go off the</p> <p>18 record and conclude this deposition at 1:28 p.m.</p> <p>19 eastern time.</p> <p>20 (Deposition concluded at 1:29</p> <p>21 p.m.)</p> <p>22</p>	<p style="text-align: right;">Page 252</p> <p>1 STATE OF KENTUCKY)</p> <p>2) SS</p> <p>3 COUNTY OF JEFFERSON)</p> <p>4 I, Kimberley Ann Keene, a notary public, within and for</p> <p>5 the state at Large, do hereby certify that the foregoing</p> <p>6 deposition of</p> <p>7 ERIC FRENCH</p> <p>8 was taken before me at the time and place and for the purpose</p> <p>9 in the caption stated; that the witness was first duly sworn</p> <p>10 to tell the truth, the whole truth and nothing but the truth;</p> <p>11 that the deposition was taken before me stenographically and</p> <p>12 transcribed by me; that the foregoing is a full, true and</p> <p>13 complete transcript of the said deposition so given; that</p> <p>14 there was no request that the witness read and sign the</p> <p>15 transcript; that the appearances were as stated in the</p> <p>16 caption.</p> <p>17 I further certify that I am neither counsel or of kin to</p> <p>18 any of the parties to this action, and am in no way interested</p> <p>19 in the outcome of said action.</p> <p>20 Witness my signature this 6th day of October,</p> <p>21 2007. My Commission Expires on August 29, 2011.</p> <p>22</p> <p>_____ Kimberley Ann Keene Registered Professional Reporter</p>
<p style="text-align: right;">Page 251</p> <p>1 STATE OF KENTUCKY)</p> <p>2)</p> <p>3 COUNTY OF JEFFERSON)</p> <p>4</p> <p>5 I HAVE READ THE FOREGOING PAGES, AND THE</p> <p>6 STATEMENTS CONTAINED THEREIN (SUBJECT TO</p> <p>7 CORRECTIONS, ADDITIONS, AND DELETIONS CONTAINED IN</p> <p>8 THE ADDENDUM ANNEXED HERETO, IF ANY), AND THEY ARE</p> <p>9 TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.</p> <p>10</p> <p>11</p> <p>12 _____</p> <p>13 ERIC FRENCH</p> <p>14</p> <p>15 SUBSCRIBED AND SWORN BEFORE ME THIS DAY</p> <p>16 BY _____, THIS ____ DAY</p> <p>17 OF _____, 2007.</p> <p>18</p> <p>19</p> <p>20 MY COMMISSION EXPIRES: _____</p> <p>21 _____</p> <p>22 Notary Public</p>	

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EXHIBIT 26

Gaston, Sue

January 24, 2008

Washington, DC

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -
IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
THIS DOCUMENT RELATES TO)
U.S. ex rel. Ven-a-Care of) Judge Patti B. Saris
the Florida Keys, Inc.)
v.) Chief Magistrate
Abbott Laboratories, Inc.,) Judge Marianne B.
No. 06-CV-11337-PBS) Bowler
- - - - -

(cross captions appear on following pages)

Videotaped deposition of SUE GASTON

Volume I

Washington, D.C.

Thursday, January 24, 2008

9:00 a.m.

Henderson Legal Services, Inc.

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Gaston, Sue

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<p style="text-align: right;">Page 38</p> <p>1 division?</p> <p>2 A. Clerical.</p> <p>3 Q. After that what did you do?</p> <p>4 A. Disability operations in Social Security.</p> <p>5 Q. What was the nature of your job in that?</p> <p>6 A. Processing foreign claims. Social</p> <p>7 Security claims.</p> <p>8 Q. Was that a clerical or a --</p> <p>9 A. I was a benefit authorizer.</p> <p>10 Q. Okay. So that's more than clerical?</p> <p>11 A. Correct.</p> <p>12 Q. So you were to look at the forms and</p> <p>13 decide whether or not to -- or make recommendations</p> <p>14 on whether or not to authorize benefits?</p> <p>15 A. No. We just -- we did more of -- we</p> <p>16 didn't determine or authorize claims. But we</p> <p>17 processed the claims after the authorization</p> <p>18 occurred.</p> <p>19 Q. What was the next job you had after that?</p> <p>20 A. With HCFA.</p> <p>21 Q. Okay. Was this your first job with HCFA?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. From 1991 to February of 2003 you were</p> <p>2 health insurance specialist at HCFA; is that right?</p> <p>3 A. Yes. Our actual title when I first</p> <p>4 started was different than health insurance</p> <p>5 specialist. But it was all basically the same job.</p> <p>6 They changed the name of the job.</p> <p>7 Q. But your duties and responsibility in</p> <p>8 this job were the same from April of 1991 through</p> <p>9 February of '03; is that right?</p> <p>10 A. Correct.</p> <p>11 Q. And tell me about your job at that time.</p> <p>12 What were you doing?</p> <p>13 A. I was working with the Medicaid drug</p> <p>14 rebate program pharmacy reimbursement and coverage</p> <p>15 issues.</p> <p>16 Q. When you say pharmacy reimbursement, what</p> <p>17 do you mean by that?</p> <p>18 A. It's drug reimbursement with the -- we</p> <p>19 did state plan amendments and covered issues that</p> <p>20 came up for drug coverage under Medicaid.</p> <p>21 Q. And when you say drug coverage under</p> <p>22 Medicaid, you mean what drugs would be covered under</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. And what was your position there?</p> <p>2 A. I don't recall the job title at that</p> <p>3 time.</p> <p>4 Q. On the resume that you created for</p> <p>5 purposes of this deposition -- I appreciate that --</p> <p>6 the last one I have on the page runs the dates May</p> <p>7 1988 to April 1991, post entitlement technical</p> <p>8 expert, Social Security Administration, Office of</p> <p>9 Disability and International Operations. Have we</p> <p>10 talked about that one yet?</p> <p>11 A. Well, I went in there as a benefit</p> <p>12 authorizer and then I was promoted to the post</p> <p>13 entitlement technical expert. But it was still</p> <p>14 foreign claims and it was -- from benefit authorizer</p> <p>15 to the post entitlement job, it was all within those</p> <p>16 years.</p> <p>17 Q. And you worked at the Social Security</p> <p>18 Administration until April of 1991; is that right?</p> <p>19 A. Correct.</p> <p>20 Q. During your time at the SSA did you</p> <p>21 confront issues relating to pharmacy?</p> <p>22 A. No.</p>	<p style="text-align: right;">Page 41</p> <p>1 Medicaid, correct?</p> <p>2 A. Right.</p> <p>3 Q. Not necessarily, in that category at</p> <p>4 least, the level of payment to be paid; is that</p> <p>5 right?</p> <p>6 A. Both. Whether a drug was covered under</p> <p>7 Medicaid and also any of the payment issues that</p> <p>8 would come up, what states would pay by the state</p> <p>9 planned amendments.</p> <p>10 Q. You also referenced the Medicaid drug</p> <p>11 rebate program; is that right?</p> <p>12 A. Correct.</p> <p>13 Q. What was the nature of your involvement</p> <p>14 in that during this time?</p> <p>15 A. The Medicaid drug rebate program</p> <p>16 determines if drugs are covered under Medicaid.</p> <p>17 Q. What was the nature of your job with</p> <p>18 respect to the Medicaid drug rebate program? What</p> <p>19 did you do?</p> <p>20 A. Overseeing the policy.</p> <p>21 Q. When you say overseeing policy, what do</p> <p>22 you mean by that?</p>

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<p style="text-align: right;">Page 42</p> <p>1 A. Working on any policy-related issues</p> <p>2 concerning the Medicaid drug rebate program.</p> <p>3 Q. With respect to state plan amendments and</p> <p>4 drug reimbursement, what was the nature of your work</p> <p>5 in that area?</p> <p>6 A. Working with the regional office and</p> <p>7 reviewing the state plan amendments that are</p> <p>8 submitted by the states.</p> <p>9 Q. We'll talk about that a little bit more</p> <p>10 today. Who was your boss during this time from</p> <p>11 April 1991 through February of 2003?</p> <p>12 A. Larry Reed.</p> <p>13 Q. What was Mr. Reed's title? Do you know?</p> <p>14 A. In the beginning he was a branch chief.</p> <p>15 At times he was a technical director. Other times</p> <p>16 he was a director.</p> <p>17 Q. Was there anyone sort of in the chain of</p> <p>18 command between Mr. Reed and yourself or did you</p> <p>19 report directly to Mr. Reed?</p> <p>20 A. I don't quite understand your question.</p> <p>21 Q. Have you seen an organizational chart</p> <p>22 before that has little boxes and lines?</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. And CMSO is the predecessor name for the</p> <p>2 Medicaid Bureau; is that right?</p> <p>3 A. Correct.</p> <p>4 MS. MARTINEZ: Objection, form. I think</p> <p>5 you said it backwards.</p> <p>6 MR. TORBORG: Yes. Successor name.</p> <p>7 You're right.</p> <p>8 MS. MARTINEZ: Okay.</p> <p>9 BY MR. TORBORG:</p> <p>10 Q. Just so we're clear, CMSO is the</p> <p>11 successor name to the Medicaid Bureau?</p> <p>12 A. Right.</p> <p>13 Q. And in February of 2003 you switched</p> <p>14 jobs; is that right?</p> <p>15 A. Correct.</p> <p>16 Q. And that's your current job, right?</p> <p>17 A. Yes.</p> <p>18 Q. And what is the nature of your job there?</p> <p>19 A. I'm the team lead for dispute resolution</p> <p>20 of the Medicaid drug rebate program.</p> <p>21 Q. Do you work on state plan amendments</p> <p>22 anymore?</p>
<p style="text-align: right;">Page 43</p> <p>1 A. Yes.</p> <p>2 Q. Would there be a box between you and Mr.</p> <p>3 Reed?</p> <p>4 A. A box between us? No.</p> <p>5 Q. Or did you report directly to Mr. Reed?</p> <p>6 A. To Larry Reed.</p> <p>7 Q. Okay. Who else did you work with --</p> <p>8 well, let me strike that and back up.</p> <p>9 On your resume you indicate that you</p> <p>10 worked for CMS/CMSO.</p> <p>11 A. Correct.</p> <p>12 Q. Can you tell us what that means?</p> <p>13 A. Center for Medicaid and State Operations.</p> <p>14 Q. So as I understand it there are two broad</p> <p>15 divisions within CMS, one for Medicare and one for</p> <p>16 Medicaid; is that right?</p> <p>17 A. Correct.</p> <p>18 Q. And you worked in the Medicaid side?</p> <p>19 A. Correct.</p> <p>20 Q. Was that previously referred to as the</p> <p>21 Medicaid Bureau, do you know?</p> <p>22 A. At one time.</p>	<p style="text-align: right;">Page 45</p> <p>1 A. No.</p> <p>2 Q. I wanted to ask one other thing. From</p> <p>3 1991 to 2003, the previous job, did you work on</p> <p>4 federal upper limits?</p> <p>5 A. Yes.</p> <p>6 Q. And can you tell us what those are?</p> <p>7 A. The federal government sets an upper</p> <p>8 limit reimbursement amount on certain drugs.</p> <p>9 Q. What was the nature of your involvement</p> <p>10 with the federal upper limit program?</p> <p>11 A. I took care of setting the upper limit</p> <p>12 reimbursement amount on the drugs.</p> <p>13 Q. For all drugs?</p> <p>14 A. No. There were just -- the regulations</p> <p>15 indicate that they're set on -- there are certain</p> <p>16 criteria, and they're the drugs that we would set an</p> <p>17 upper limit reimbursement amount on.</p> <p>18 Q. I asked the wrong question. What I meant</p> <p>19 to ask was for drugs that HCFA did establish a</p> <p>20 federal upper limit, you would have been involved in</p> <p>21 that?</p> <p>22 A. Correct.</p>

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<p>1 state.</p> <p>2 (Exhibit Abbott 461 was</p> <p>3 marked for</p> <p>4 identification.)</p> <p>5 MR. TORBORG: I'm told that we have five</p> <p>6 minutes left on the tape and it's within about an</p> <p>7 hour. So let's go ahead and take a break here.</p> <p>8 THE VIDEOGRAPHER: This is the end of</p> <p>9 tape 4. Off the record at 3:17.</p> <p>10 (Recess.)</p> <p>11 THE VIDEOGRAPHER: This is the beginning</p> <p>12 of tape 5 in the deposition of Ms. Gaston. On the</p> <p>13 record at 3:43.</p> <p>14 MR. TORBORG: Welcome back, Ms. Gaston.</p> <p>15 THE WITNESS: Thank you.</p> <p>16 MR. TORBORG: I wanted to cover</p> <p>17 something, some housekeeping matters on the record</p> <p>18 very quickly. I understand from Ms. Martinez that</p> <p>19 there are some additional documents from Ms.</p> <p>20 Gaston's files or legacy files that are yet to be</p> <p>21 produced. Is that right?</p> <p>22 MS. MARTINEZ: Yes.</p>	<p>1 you said from 1991 through 2003 when you were doing</p> <p>2 that, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And those three people were -- three</p> <p>5 additional people were Peter Rodler, Cindy Bergin</p> <p>6 and Gail Sexton?</p> <p>7 A. Gail Sexton worked on the FULs after</p> <p>8 2003.</p> <p>9 Q. Did she have any involvement with FULs</p> <p>10 prior to 2003?</p> <p>11 A. No.</p> <p>12 Q. What was she doing prior to 2003?</p> <p>13 A. I'm not sure. She was employed by CMS</p> <p>14 around that time, but I don't know exactly when she</p> <p>15 started.</p> <p>16 Q. And Mr. Rodler I understand was somebody</p> <p>17 who had been at HCFA and the Medicaid Bureau prior</p> <p>18 to you being there?</p> <p>19 A. Correct.</p> <p>20 Q. And then at some point he retired or</p> <p>21 moved on?</p> <p>22 A. Correct.</p>
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<p>1 MR. TORBORG: And those are ones that</p> <p>2 you're working on currently and we intend to</p> <p>3 schedule a second day with Ms. Gaston so that we can</p> <p>4 go over those documents.</p> <p>5 MS. MARTINEZ: I believe what you told me</p> <p>6 is that you'd look at them and see if you need an</p> <p>7 additional day.</p> <p>8 MR. TORBORG: That's true.</p> <p>9 MS. MARTINEZ: But naturally --</p> <p>10 MR. TORBORG: I will need an additional</p> <p>11 day anyway.</p> <p>12 MS. MARTINEZ: Okay. That's what I</p> <p>13 thought.</p> <p>14 MR. TORBORG: Okay.</p> <p>15 BY MR. TORBORG:</p> <p>16 Q. Okay. Going back to the subject of</p> <p>17 federal upper limits, Ms. Gaston, I want to ask just</p> <p>18 a few very general background questions about how</p> <p>19 the process worked at HCFA, who was involved in what</p> <p>20 aspects and things of that nature. Earlier you</p> <p>21 testified or you identified three people at CMS who</p> <p>22 were involved in establishing the FULs. I believe</p>	<p>1 Q. Do you know when he retired or moved on?</p> <p>2 A. No.</p> <p>3 Q. Can you give me a sense? Was it early</p> <p>4 '90s, late '80s?</p> <p>5 A. I'm guessing it was in the '90s. Not in</p> <p>6 the late '90s, but I'm not sure.</p> <p>7 Q. And Cindy Bergin, when did she work at</p> <p>8 CMS on the FUL issues?</p> <p>9 A. She was hired -- I'm not sure exactly the</p> <p>10 date -- probably eight or nine years ago. And I</p> <p>11 mentored here on the FULs until I left in 2003.</p> <p>12 Q. So she would have been someone that was</p> <p>13 working on FUL issues starting in the mid to late</p> <p>14 '90s; is that fair to say?</p> <p>15 A. That's fair to say.</p> <p>16 Q. And did you work with Mr. Rodler on the</p> <p>17 federal upper limit issues or did you sort of</p> <p>18 succeed his duties?</p> <p>19 A. He taught me how to handle the federal</p> <p>20 upper limit program. And then when he left I took</p> <p>21 it over.</p> <p>22 Q. And did Cindy Bergin take it over from</p>

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1 the prices. It will have an AWP price, a direct
 2 price or WAC price. If there's not a price it'll
 3 just be blank in any of those categories. And then
 4 the system, the application itself -- from my
 5 recollection -- it's been a while since I've used
 6 it. But it will determine a FUL price where it can.
 7 Then we apply some manual review just to
 8 assure we have -- there's some edits and I can't
 9 remember all of those. But we want to make sure
 10 that it's using -- because it's supposed to use the
 11 lowest price in published compendia, and we want to
 12 make sure that that lowest price is a true price,
 13 that it's using a true price to establish a FUL.
 14 So there's a manual review that's applied
 15 to some of the drugs where the pricing might not
 16 look right in there or there's missing pricing. But
 17 basically there's a lot of manual review that's
 18 included before the final FUL listing will come out.
 19 Q. Okay. I appreciate that. I'm going to
 20 try to follow up on each of those steps as best I
 21 can. You indicated that there was a system
 22 involved.

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1 A. It's an application.
 2 Q. I think I've seen some documents that
 3 indicate the FUL process was computerized?
 4 A. Correct.
 5 Q. Right? Is that what you're talking about
 6 when you talk about the system?
 7 A. Yeah. It's an application that they use.
 8 Q. And what kind of application is it?
 9 A. I'm not a techie person. I don't know.
 10 It's on the computer. It's an application. I don't
 11 know what more -- how to describe it.
 12 Q. Was the application set up before you
 13 started working on it or did you --
 14 A. No.
 15 Q. -- take part in setting it up?
 16 A. When I first started working on FULs it
 17 was in our mainframe. The activity would occur in
 18 our mainframe. They took it from the mainframe and
 19 put it into an application that they can use on the
 20 computer, if that helps.
 21 Q. And do you recall -- was there someone --
 22 you mentioned systems folks. Was there somebody at

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1 CMS in the systems department that was involved in
 2 this?
 3 A. In the switch to the new application?
 4 Q. Yeah. And basically the FUL program in
 5 general. Who was involved in loading data --
 6 A. The systems support was Dona Kaufman.
 7 D-o-n-a.
 8 Q. Was there anyone else you recall or was
 9 she the primary person?
 10 A. There was someone before her, but he no
 11 longer works for CMS and I can't remember his name.
 12 But she was the main one for the new application.
 13 Q. Do you know if she's still there today?
 14 A. Yes.
 15 Q. Do you recall when the new application --
 16 when you moved from the mainframe to the new
 17 application?
 18 A. Time?
 19 Q. Yes. When that happened.
 20 A. After '95.
 21 Q. Prior to 1995 was the process still
 22 computerized bringing in information from the

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1 compendia and that kind of information?
 2 A. It was brought into the mainframe.
 3 Q. Just brought into a different computer in
 4 other words? I'm not a techie either.
 5 A. I'm just saying mainframe because that's
 6 what I know.
 7 Q. And do you know what the application is
 8 called?
 9 A. FULs.
 10 Q. FULs. Now, the Orange Book has a place
 11 in this process, correct?
 12 A. Right.
 13 Q. And could you tell us what the Orange
 14 Book is and what impact it had?
 15 A. The FDA Orange Book. It lists the drugs
 16 that are grouped by the FDA. If you have an Orange
 17 Book available, I think they have on the front
 18 page -- yeah -- the Orange Book can explain it much
 19 better than I can. But -- yeah.
 20 Q. I'm handing you our only copy of the
 21 Orange Book.
 22 A. But they get this electronically and it

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<p>1 just has drugs by ingredient names. And they don't 2 have NDC numbers or anything in here. But they pull 3 data from the Orange Book where the criteria that's 4 in the regulation -- so it meets that criteria. And 5 they just pull what they can from there. There's 6 other type of system criteria in there that picks 7 the drugs that are selected for the FULs. But it 8 pulls it from the Orange Book first. 9 Q. So they have an electronic version of the 10 Orange Book? 11 A. They -- it's my understanding they do 12 now. 13 Q. Do you know when they first started using 14 an electronic version of the Orange Book versus some 15 other method of getting the Orange Book data into 16 this computer? 17 A. I really don't know. 18 Q. Do you recall at some point somebody had 19 to go through the manual copy of the Orange Book -- 20 A. Oh, no. They wouldn't go through the 21 manual. They would just request the data from FDA. 22 I think the data now is available and they could go</p>	<p>1 products approved by the FDA are A-rated which are 2 therapeutically equivalent and then there must be 3 two rated A in the Orange Book. And then there's 4 another criteria where they can also allow a B-rated 5 drug when the A-rated drug products -- when there's 6 three A-rated drug products in the Orange Book. 7 Q. Okay. So if not all the drugs within a 8 drug product group are rated A, then you have to 9 have three that are rated A? 10 A. Correct, to allow a B-rated product. 11 Q. Now, would the B-rated product or a 12 product that's not rated A, would that still be 13 governed by the FUL? 14 A. If it's included in this, yes. 15 Q. What involvement would you have in the 16 review of the Orange Book data and what gets on the 17 Orange Book lists in the computer? 18 A. I have nothing to do with that. 19 Q. Who was involved in that? 20 A. If you're saying reviewing it -- 21 Q. Just who was involved in deciding which 22 drugs from the Orange Book, whether it be manual or</p>
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<p>1 on the Web or someplace in FDA's website and obtain 2 the data now. 3 Q. But it was all done to your knowledge -- 4 as far as you can recall it was done electronically 5 in some way? 6 A. Correct. 7 Q. Somebody would set up a program that 8 would, say, identify the drugs that meet the FUL 9 criteria and then down those into a file, something 10 called Orange Book or something like that? Is that 11 how it worked? 12 A. You would have to talk to our systems 13 folks. I just know that they would get -- they had 14 the criteria set in there and however it works, you 15 know. I mean, we're simplifying it, but I'm not a 16 data person. We just tell them what we need from 17 the Orange Book and they set up their criteria on 18 how they're going to get it and how it's selected. 19 Q. And do you recall what the criteria was 20 for a drug to qualify for the FUL program? 21 A. I'm going to read it from here. But it 22 says -- well, all the formulations of the drug</p>	<p>1 electronic, get put into your FUL computer? 2 A. The system folks would download the drugs 3 from the Orange Book. If further review is needed, 4 if some of the drugs are questionable, if they met 5 the criteria and maybe weren't on there before, then 6 we would look at those drugs to verify that they did 7 meet the criteria. 8 Q. Let me ask you a specific question here. 9 And I'll give you my copy of this. 10 MR. TORBORG: And Ms. Martinez, you can 11 look on with her if you'd like. 12 MS. MARTINEZ: I'm going to try to stay 13 away from that videotape. 14 THE WITNESS: Thanks. 15 BY MR. TORBORG: 16 Q. Specifically, on this top page, the right 17 column is a drug under the prescription drug product 18 list by the name vancomycin hydrochloride. 19 MS. MARTINEZ: Give me one second just to 20 glance at what it is. 21 Counsel, would you like to lay out a 22 little bit of foundation, like maybe the date of the</p>

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<p style="text-align: right;">Page 246</p> <p>1 that injectables and other products many times are 2 provided in a physician's office and other type of 3 settings where they might not be claimed separately. 4 They might be included in a payment, like a 5 physician payment. 6 Also, injectables, many times when 7 they're billed on the claim form they're not -- 8 they're billed with codes rather than NDC numbers, 9 which means that the states may not be paying for 10 them through their pharmacy benefit but through 11 another means, such as a physician's visit or a 12 hospital or something like that. 13 So many times what we're trying to do 14 with the FULs is use most commonly used drugs and 15 covered outpatient drug type, so like tablets and 16 capsules. 17 Q. Is there anything in the regulations or 18 statutes that limit the FUL program to tablets or 19 capsules or other drugs that are commonly 20 administered in the outpatient setting? 21 A. Not that I know of. 22 Q. That was just the -- when you started</p>	<p style="text-align: right;">Page 248</p> <p>1 Q. Because if the initial identification of 2 drugs that satisfied the criteria was just two or 3 more A-rated drugs or three or more A-rated drugs if 4 one of them was not A-rated, and that was done by 5 computer presumably that would bring in injectable 6 drugs like vancomycin, right? 7 MS. ALBEE: Objection. 8 A. No. There are still more criteria. You 9 still have the Orange Book criteria, but there are 10 still criteria that the systems folks put in to look 11 for the type of drugs that the FUL prices are set 12 on. 13 Q. So is it your understanding that HCFA 14 specifically set up the computer program to identify 15 and exclude injectable drugs? 16 MS. MARTINEZ: Objection, form. 17 A. In one part of the process, yes. 18 Q. And do you know in what part of the 19 process that was done? 20 A. No, I don't. 21 Q. Did you have any part in that process of 22 either manually excluding the injectables drugs or</p>
<p style="text-align: right;">Page 247</p> <p>1 working on the FULs that was just the way that HCFA 2 approached it, you did not establish FULs on the 3 injectables? 4 A. Correct. 5 Q. And did you ever receive any explanation 6 about why that was? 7 A. I can't say specifically there was an 8 explanation. I think you learn this as you work 9 with the program. 10 Q. But you would agree with me that the 11 Orange Book page that I showed you does show that in 12 1996 there were at least two versions of vancomycin 13 that were rated A in the Orange Book? 14 A. Correct. 15 MS. MARTINEZ: Objection, form. 16 Q. And so -- I want to get back to this 17 computer business. Was the computer program 18 specifically designed to not include injectables or 19 how did that work? 20 A. You'd have to talk to the data folks. We 21 were not including injectables. I don't know what 22 criteria they put in there.</p>	<p style="text-align: right;">Page 249</p> <p>1 setting up a computer program such that those drugs 2 would be moved aside? 3 A. The basic criteria for the system was 4 developed before I got there. 5 Q. Who would be the best person to ask about 6 why it was that injectables were specifically 7 excluded from the FUL program? 8 MR. WINGET-HERNANDEZ: Objection, form. 9 MS. MARTINEZ: Objection, form. 10 A. I don't know. Pete Rodler was the first 11 one I know that worked on FULs. That's the only 12 person I could think of. 13 Q. Are these other -- now, we've talked a 14 little bit about Exhibit 462 that talks about the 15 Orange Book data. And we talked about the criteria 16 already, correct? And now you've identified I think 17 another criteria, which is to exclude injectable 18 drugs, right? 19 MS. MARTINEZ: Objection, form. 20 A. Correct. 21 Q. Is that criteria written down anywhere? 22 MR. WINGET-HERNANDEZ: Objection, form.</p>

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EXHIBIT 27

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -
IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
THIS DOCUMENT RELATES TO)
U.S. ex rel. Ven-a-Care of) Judge Patti B. Saris
the Florida Keys, Inc.)
v.) Chief Magistrate
Abbott Laboratories, Inc.,) Judge Marianne B.
No. 06-CV-11337-PBS) Bowler
- - - - -

(cross captions appear on following pages)

Videotaped deposition of SUE GASTON

Volume II

Washington, D.C.

Wednesday, March 19, 2008

9:00 a.m.

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<p>1 or to the deposition.</p> <p>2 MR. TORBORG: What would you have me</p> <p>3 do, Ms. Martinez? Would you like me to question</p> <p>4 about the testimony without providing her a copy</p> <p>5 of it? Would that be your preference?</p> <p>6 MS. MARTINEZ: No. I'm going to object</p> <p>7 to form either way.</p> <p>8 MR. TORBORG: Okay. But would you ask</p> <p>9 me to not show her that transcript because it's a</p> <p>10 rough form?</p> <p>11 MS. MARTINEZ: No. I'm just saying</p> <p>12 both are improper. So I'm going to object to</p> <p>13 form. The court can rule. If you want to use</p> <p>14 another approach just in case so you have the</p> <p>15 opportunity to maintain whatever answers the</p> <p>16 witness gives, you can use another approach.</p> <p>17 It's your own judgment.</p> <p>18 MR. TORBORG: Is it your position that</p> <p>19 -- would you have an objection if I showed her a</p> <p>20 final copy of the transcript?</p> <p>21 MS. MARTINEZ: Yes.</p> <p>22 MR. TORBORG: Why? I want to see if I</p>	<p>1 last time, but you recall an individual by the</p> <p>2 name of Zack Bentley, correct?</p> <p>3 A. Yes.</p> <p>4 Q. He's affiliated with the company called</p> <p>5 Ven-A-Care?</p> <p>6 A. Yes.</p> <p>7 Q. And for the period 1991 through 2003</p> <p>8 you were involved with the federal upper limit</p> <p>9 program for Medicaid drugs; is that right?</p> <p>10 A. Correct.</p> <p>11 Q. And you recalled attending a meeting</p> <p>12 with Ven-A-Care on or about -- you didn't</p> <p>13 remember the exact date, but on or around the</p> <p>14 date November 14th of 1995. Is that fair to say?</p> <p>15 A. I don't remember the exact date.</p> <p>16 Q. You remember having a meeting with</p> <p>17 representatives of Ven-A-Care in the mid-1990s;</p> <p>18 is that fair to say?</p> <p>19 A. Yes.</p> <p>20 Q. That was a meeting in Baltimore that</p> <p>21 was attended by a number of people, correct?</p> <p>22 A. Yes.</p>
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<p>1 can cure whatever the objection is.</p> <p>2 MS. MARTINEZ: I just don't think it's</p> <p>3 a proper question.</p> <p>4 MR. TORBORG: It's not a proper</p> <p>5 question to ask someone about a deposition</p> <p>6 transcript?</p> <p>7 MS. MARTINEZ: I would object to the</p> <p>8 form of your question when you ask one witness</p> <p>9 about what another witness said.</p> <p>10 MR. TORBORG: You think that's</p> <p>11 improper?</p> <p>12 MS. MARTINEZ: Yeah. I would object to</p> <p>13 it.</p> <p>14 MR. TORBORG: Okay.</p> <p>15 BY MR. TORBORG:</p> <p>16 Q. You can go ahead and continue</p> <p>17 reviewing.</p> <p>18 A. Do you want me to read the whole thing?</p> <p>19 Q. Yeah. Through the end.</p> <p>20 A. Okay. (Reading.)</p> <p>21 Okay. I'm finished.</p> <p>22 Q. Ms. Gaston, I believe we covered this</p>	<p>1 Q. Do you recall having conversations with</p> <p>2 Mr. Bentley prior to that meeting?</p> <p>3 A. I know I had conversations with Zachary</p> <p>4 Bentley. I don't know if it was prior to the</p> <p>5 meeting, after the meeting. I don't know the</p> <p>6 time period.</p> <p>7 Q. Do you recall what the substance of</p> <p>8 those meetings was?</p> <p>9 A. The meetings or the calls?</p> <p>10 Q. I'm sorry. The calls with Mr. Bentley.</p> <p>11 Do you recall what was being discussed?</p> <p>12 A. I don't recall.</p> <p>13 Q. Do you recall Mr. Bentley advising you</p> <p>14 of -- either in a meeting that you attended or in</p> <p>15 a telephone call -- that there was a large</p> <p>16 difference between acquisition costs and AWP's for</p> <p>17 certain injectable and infusion drugs?</p> <p>18 MS. MARTINEZ: Objection, form.</p> <p>19 A. I don't remember Zachary Bentley</p> <p>20 telling me that.</p> <p>21 Q. Do you recall becoming aware of that?</p> <p>22 A. Yes.</p>

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<p>1 Q. How did you become aware of that?</p> <p>2 A. Because of the Ven-A-Care litigation.</p> <p>3 Q. And you recall becoming aware of the</p> <p>4 Ven-A-Care litigation in the mid-1990s; is that</p> <p>5 fair to say?</p> <p>6 A. Yes.</p> <p>7 Q. And you may have had conversations with</p> <p>8 Mr. Bentley or others at Ven-A-Care prior to the</p> <p>9 1995 meeting; is that fair to say?</p> <p>10 A. It's fair to say.</p> <p>11 Q. During the period in the mid-1990s --</p> <p>12 or -- I'm sorry. In the period from 1991 to,</p> <p>13 say, 1997, did you have discretion on whether or</p> <p>14 not to set a federal upper limit on drugs?</p> <p>15 MS. MARTINEZ: Objection, form.</p> <p>16 A. Yes.</p> <p>17 Q. So if you wanted to set a federal upper</p> <p>18 limit on the injectable and infusion drugs that</p> <p>19 Ven-A-Care advised you of a large difference</p> <p>20 between acquisition cost and AWP, you were able</p> <p>21 to do so; is that fair to say?</p> <p>22 MS. ALBEE: Objection, form.</p>	<p>1 what type of drugs and the criteria basically was</p> <p>2 drugs that were considered outpatient drugs,</p> <p>3 generally dispensed at the pharmacy level.</p> <p>4 Q. And we talked about this last time.</p> <p>5 But you were aware that you specifically took</p> <p>6 steps to exclude infusion and injectable drugs</p> <p>7 from the mechanism by which the FULs were</p> <p>8 calculated, correct?</p> <p>9 MS. MARTINEZ: Objection, form.</p> <p>10 A. Correct.</p> <p>11 Q. Do you recall any discussions about</p> <p>12 perhaps changing the HCFA policy or criteria not</p> <p>13 to establish FULs for injectable and infusion</p> <p>14 drugs at any point in time?</p> <p>15 A. I know that the conversation was</p> <p>16 probably discussed. I don't know when. But no</p> <p>17 steps were taken to do that.</p> <p>18 Q. Can you tell me why not steps were</p> <p>19 taken to do that?</p> <p>20 A. It's my understanding that the criteria</p> <p>21 we were using is to set federal upper limit</p> <p>22 prices on drugs that were most commonly used.</p>
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<p>1 A. No.</p> <p>2 Q. Why not?</p> <p>3 A. Because we didn't set federal upper</p> <p>4 limit prices on injectable drugs or infusion</p> <p>5 drugs. We set them on drugs that were the most</p> <p>6 commonly used such as tablets, capsules, creams.</p> <p>7 Q. But you're not aware of any written</p> <p>8 statutory or regulatory guidance that prohibited</p> <p>9 you from setting a FUL on infusion and injectable</p> <p>10 drugs; is that right?</p> <p>11 A. That's right.</p> <p>12 Q. It was a policy of HCFA at the time you</p> <p>13 started administering the FUL program not to set</p> <p>14 FULs on those drugs; is that correct?</p> <p>15 MS. MARTINEZ: Objection, form.</p> <p>16 A. I think I would rather say that it was</p> <p>17 the criteria that was established before I</p> <p>18 started doing the federal upper limit program.</p> <p>19 Q. And when you say criteria, could you</p> <p>20 explain what you mean by that?</p> <p>21 A. The criteria is how they determined</p> <p>22 what federal upper limit prices would apply to</p>	<p>1 When we stepped into the arena of injectable</p> <p>2 drugs or other drugs that weren't most commonly</p> <p>3 used, I think it was a little more difficult to</p> <p>4 capture those drugs for various reasons. So</p> <p>5 that's why we stuck with the basic criteria that</p> <p>6 we used.</p> <p>7 Q. But you believe that there were</p> <p>8 discussions about possibly moving injectable</p> <p>9 infusion drugs into the FUL program; is that fair</p> <p>10 to say?</p> <p>11 A. I wouldn't say that specifically.</p> <p>12 There could have been conversations. I wouldn't</p> <p>13 say that the conversations went as far as to say</p> <p>14 let's move them into the FUL arena. But the</p> <p>15 conversations were there. And I can only answer</p> <p>16 that generally, because I only remember short</p> <p>17 conversations maybe discussing the issue.</p> <p>18 Q. If there has been testimony from Mr.</p> <p>19 Bentley that he -- his best recollection is that</p> <p>20 he advised you of the large differences between</p> <p>21 acquisition cost and AWP's for certain injectable</p> <p>22 infusion drugs at least as early as 1990, could</p>

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<p style="text-align: right;">Page 324</p> <p>1 you say that Mr. Bentley's recollection is 2 incorrect? 3 MS. ALBEE: Objection, form. 4 MS. MARTINEZ: Objection, form. 5 A. I can't answer to his statements. 6 Q. You just -- it's your testimony that 7 the conversations may have happened; you just 8 don't recall? 9 A. I don't recall conversations like that 10 with Zachary Bentley. 11 Q. But you recall conversations with Mr. 12 Bentley? 13 A. Correct. 14 Q. You just don't recall one way or the 15 other what the substance of the conversations 16 was, correct? 17 A. Correct. 18 Q. What other types of conversations would 19 you have had with Mr. Bentley apart from the 20 federal upper limit program? 21 A. I don't remember the conversations that 22 I had with Zachary Bentley. Specifically the</p>	<p style="text-align: right;">Page 326</p> <p>1 reimbursement issues. 2 Q. Do you recall Mr. Bentley ever raising 3 issues about the Medicaid drug rebate program? 4 A. I can't remember specifically what I 5 discussed with Zachary Bentley. 6 Q. Do you have any -- what is your best 7 guess about the substance of the conversations 8 that you had with Mr. Bentley and yourself? 9 MS. MARTINEZ: Objection, form. 10 Q. Do you believe it related to the FUL 11 program or something else? 12 MS. MARTINEZ: Objection, form. 13 A. My best guess would say it probably 14 related to the FUL program. 15 Q. Ms. Gaston, is it your testimony that 16 even though you became aware of the large 17 differences between acquisition costs and AWP's 18 for certain injectable and infusion products, you 19 did not believe you had the authority or 20 discretion to place FULs on those drugs? 21 MS. MARTINEZ: Objection, form. 22 Q. Is that a fair summary of your</p>
<p style="text-align: right;">Page 325</p> <p>1 conversations, I don't remember. 2 Q. And my question is a touch different. 3 A. Okay. 4 Q. And it's based on what you were doing 5 at HCFA, what your responsibilities were and your 6 knowledge of how Mr. Bentley fit into the story. 7 A. Okay. 8 Q. Do you have a sense for -- apart from 9 the federal upper limit program, what other 10 topics you would have been discussing with Mr. 11 Bentley? 12 MS. ALBEE: Objection, form. 13 MS. MARTINEZ: Objection, form. 14 A. I worked on state plan amendments. If 15 he had an issue about something that was 16 occurring in Florida or another state, he could 17 have called me about that, what was in the state 18 plan amendment. I don't even know if I was 19 handling Florida at the time. Or whatever states 20 he might have questioned. He could have asked 21 any kind of general questions about the Medicaid 22 drug rebate program or any kind of pharmacy</p>	<p style="text-align: right;">Page 327</p> <p>1 testimony? 2 MS. MARTINEZ: Objection, form. 3 A. We did not set FUL prices on those 4 types of drugs. Is it would be a matter of 5 changing the criteria. And that wouldn't be 6 strictly my place to do that. 7 Q. Okay. Fair point. Who had the 8 authority or whose place was it to change the 9 criteria? 10 A. Specifically, I don't know. I know I 11 would have to go to Larry. I don't know whether 12 he would have to get authority from someone else 13 to do that. 14 Q. And Mr. Reed was in attendance in at 15 least one of the meetings you had with Ven-A-Care 16 where they discussed the large difference between 17 acquisition cost and AWP's with Ven-A-Care, 18 correct? 19 MS. MARTINEZ: Objection, form. 20 A. He was present at the Ven-A-Care 21 meetings. 22 Q. Do you recall any steps that were taken</p>

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<p style="text-align: right;">Page 328</p> <p>1 at all to attempt to get FULs established for 2 infusion or injectable drugs? 3 A. No, I don't. 4 Q. Do you recall, Ms. Gaston, yourself 5 thinking in the mid-1990s when you were becoming 6 aware of the large differences between 7 acquisition cost and AWP for infusion and 8 injectable drugs why aren't we establishing FULs 9 for these drugs? 10 MS. MARTINEZ: Objection, form. 11 Q. Do you recall having that thought in 12 your head? 13 A. I had the thought in my head. But the 14 thought in my head is just trying to capture more 15 drugs for savings to the states. Whether it was 16 injectables or unit dose or anything outside of 17 the basic criteria, I thought about trying to 18 expand it to include additional drugs just for 19 cost saving purposes. 20 Q. Do you recall becoming aware of any 21 other classes of drugs outside of infusion and 22 injectable drugs where you were becoming aware of</p>	<p style="text-align: right;">Page 330</p> <p>1 FUL program was to mitigate against certain 2 manufacturers having high AWP's on their drugs? 3 MS. MARTINEZ: Objection, form. 4 A. The purpose of the FUL program was to 5 set a reasonable reimbursement rate for states. 6 Q. And do you have an understanding about 7 -- as the person who was in charge of the FUL 8 program from the early '90s through I think 2003, 9 2004 -- is that about -- 10 A. 2003. 11 Q. 2003. Do you have an understanding of 12 why was this program created? Why not just take 13 the AWP's for each manufacturer's drugs straight 14 from the compendia? 15 A. It was in regulations. The FUL program 16 was in regulations. 17 Q. But did you have an understanding of 18 the purpose behind it? 19 A. Yes, I did. 20 Q. And your understanding was what? 21 A. It's to set -- the federal government 22 sets a reimbursement rate for states and is</p>
<p style="text-align: right;">Page 329</p> <p>1 the large differences between acquisition cost 2 and AWP's? 3 MS. MARTINEZ: Objection, form. 4 MS. ALBEE: Objection, form. 5 A. Here again, when I'm working with the 6 FUL program I'm looking at it just to try to 7 include more drugs. I'm not looking at it -- at 8 a class of drugs and where there might be a 9 difference in the pricing. 10 Q. You testified a second ago that you 11 were concerned or you wanted to try to achieve 12 more cost savings for Medicaid, correct? 13 A. Correct. 14 Q. And the FUL program was a tool that CMS 15 could use to do that, correct? 16 A. Correct. 17 Q. And you understood the purpose of the 18 FUL program was to mitigate against certain 19 manufacturers having high AWP's, correct? 20 MS. MARTINEZ: Objection, form. 21 A. Can you repeat that? 22 Q. You understood that the purpose of the</p>	<p style="text-align: right;">Page 331</p> <p>1 trying to achieve savings. We're trying to set 2 reasonable reimbursement rates for certain 3 generic drugs. 4 Q. Do you recall taking any steps, whether 5 it be merely a conversation with Mr. Reed or 6 someone else in your office to establish federal 7 upper limits for infusion and injectable drugs? 8 A. The conversation could have come up. I 9 know it was discussed about including those in 10 FULs, but it was just a conversation. 11 Q. And the conversation, was that with Mr. 12 Reed? 13 A. I can't say. It probably included Mr. 14 Reed, because he was my supervisor. 15 Q. Who else would have been included in 16 that? 17 A. I don't know. It depends on who I was 18 mentoring at the time. 19 Q. Did you have conversations with anyone 20 outside of CMS about setting federal upper limits 21 for infusion and injectable drugs? 22 A. I don't recall that, no.</p>

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<p style="text-align: right;">Page 404</p> <p>1 Q. And originally it was Peter Rodler who</p> <p>2 trained you?</p> <p>3 A. Correct.</p> <p>4 Q. So starting in about 1991 Mr. Rodler</p> <p>5 would have trained you to set FULs?</p> <p>6 A. Yes.</p> <p>7 Q. And I think you said last time that</p> <p>8 when Mr. Rodler left CMS in the mid-1990s you</p> <p>9 became solely responsible for setting the FULs at</p> <p>10 that point, subject obviously to approval kind of</p> <p>11 up the chain?</p> <p>12 A. Correct.</p> <p>13 Q. But you were the person day-to-day that</p> <p>14 would get the printouts from the FUL application</p> <p>15 and do the manual review and actually set the</p> <p>16 FUL, correct?</p> <p>17 A. Correct.</p> <p>18 MS. MARTINEZ: Objection, form.</p> <p>19 A. But also in that period of time there</p> <p>20 were other individuals that I trained.</p> <p>21 Q. In a period '91 to 2003?</p> <p>22 A. Correct.</p>	<p style="text-align: right;">Page 406</p> <p>1 MS. MARTINEZ: Objection, form.</p> <p>2 A. Correct.</p> <p>3 MR. BUEKER: I ask the court reporter</p> <p>4 to mark this as New York Counties Exhibit 1.</p> <p>5 (Exhibit NY Counties 001 was</p> <p>6 marked for identification.)</p> <p>7 BY MR. BUEKER:</p> <p>8 Q. It's a document that's an excerpt from</p> <p>9 the Code of Federal Regulations. I just want to</p> <p>10 make sure we have a common understanding. This</p> <p>11 section 447.332 is the FUL regulation, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And it's a regulation with which you're</p> <p>14 familiar, right?</p> <p>15 A. Yes.</p> <p>16 Q. In fact you set the FULs under this</p> <p>17 regulation for the better part of 12 years,</p> <p>18 right?</p> <p>19 MS. MARTINEZ: Objection, form.</p> <p>20 A. Yes.</p> <p>21 Q. To your knowledge did the regulation</p> <p>22 change at all during the period 1991 to 2003?</p>
<p style="text-align: right;">Page 405</p> <p>1 Q. Yeah. Okay. And let me -- let's see</p> <p>2 if we can spell that out a little more clearly.</p> <p>3 The other individual I know you trained was Cindy</p> <p>4 Bergin?</p> <p>5 A. Correct.</p> <p>6 Q. And when did you begin training Ms.</p> <p>7 Bergin on calculating or establishing FULs?</p> <p>8 A. When she started with the government in</p> <p>9 '99.</p> <p>10 Q. So from 1999 until 2003 you and Ms.</p> <p>11 Bergin would have worked on FULs setting FULs</p> <p>12 together?</p> <p>13 A. Correct.</p> <p>14 Q. But you were involved in the process of</p> <p>15 setting FULs through your departure from the</p> <p>16 policy position in 2003, correct?</p> <p>17 A. Correct.</p> <p>18 Q. So as I understand it, there was a</p> <p>19 period of time between, say, 1995 or the mid-</p> <p>20 1990s when Mr. Rodler left and 1999 when Ms.</p> <p>21 Bergin arrived where you were solely responsible</p> <p>22 for setting the FULs?</p>	<p style="text-align: right;">Page 407</p> <p>1 A. There was a period -- and I don't know</p> <p>2 -- there was a period where we allowed the</p> <p>3 federal upper limit drugs to be expanded to look</p> <p>4 at at least three A-rated.</p> <p>5 Q. Let me see if I can help --</p> <p>6 A. As long -- and I can't remember the</p> <p>7 dates.</p> <p>8 Q. Let me see if I can help you with the</p> <p>9 dates, because I think we talked a little bit</p> <p>10 about this the last time. As I read this,</p> <p>11 section (a)(1) talks about all formulations of</p> <p>12 the drug needing to be therapeutically</p> <p>13 equivalent, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And at some point your recollection is</p> <p>16 that CMS's approach to setting FULs expanded and</p> <p>17 it wasn't that all drugs had to be A-rated, but</p> <p>18 there had to be three A-rated equivalents,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. And we looked at a document last time</p> <p>22 that was a printout from the OBRA '90 statute.</p>

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EXHIBIT 28

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IN THE UNITED STATES
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE)
PRICE LITIGATION) MDL No. 1456
) Civil Action No.
THIS DOCUMENT RELATES TO:) 01-CV-12257-PBS
)
ALL CASES)
) Judge Patti B. Saris

ORAL AND VIDEOTAPED DEPOSITION

OF RICHARD A. GONZALEZ

June 3, 2008

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ORAL AND VIDEOTAPED DEPOSITION OF RICHARD A.
GONZALEZ, taken in the above-entitled cause pursuant
to the Federal Rules of Civil Procedure of the United
States District Courts, pertaining to the taking of
depositions, taken before ROBIN M. CHIMNIAK, a Notary

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<p style="text-align: right;">Page 86</p> <p>1 about the Hospital Products Division?</p> <p>2 A. Well, typically the list price is -- is</p> <p>3 similar, again, to what I described to you to be the</p> <p>4 Diagnostics experience. Is when you bring a product</p> <p>5 to the marketplace, you determine what that -- what</p> <p>6 that price should be, based on a number of different</p> <p>7 factors. Number of competitors; if there is a</p> <p>8 competitive product on the market, where is it priced;</p> <p>9 what kind of value can we bring that's above and</p> <p>10 beyond what the competitor can bring. And if there is</p> <p>11 any of that, then obviously we believe we could</p> <p>12 offer -- get a premium.</p> <p>13 And so you look at all those parameters,</p> <p>14 and you set a price. And then from that point forward</p> <p>15 that is typically the list price that you would make</p> <p>16 adjustments off of.</p> <p>17 Q. When you say "adjustments," do you mean for</p> <p>18 a contract price?</p> <p>19 A. For both contract, CPI increases.</p> <p>20 Q. Did -- was it your understanding that for</p> <p>21 the Hospital Products Division, that the -- well, let</p> <p>22 me ask you this. Let me ask you this first.</p>	<p style="text-align: right;">Page 88</p> <p>1 prices. Although there were some list price sales</p> <p>2 that were -- that were in that.</p> <p>3 But the way we operated our financial</p> <p>4 planning process, you'd roll all that in. And</p> <p>5 remember this is a division where 90-plus percent of</p> <p>6 the revenues come out of the hospital market, and</p> <p>7 probably 90-plus percent of those revenues come from,</p> <p>8 you know, five or six major group purchasing</p> <p>9 organizations. And so -- but it's -- it's a broad</p> <p>10 portfolio of products.</p> <p>11 And so we typically -- I typically didn't</p> <p>12 look at list price or individual prices, frankly, very</p> <p>13 often. You know, there is just too many of them to</p> <p>14 focus on.</p> <p>15 Q. Did you have an understanding as to the</p> <p>16 volume of sales that Abbott made at list price?</p> <p>17 A. I had a general understanding.</p> <p>18 Q. What percentage of sales did the Hospital</p> <p>19 Products division make at list price?</p> <p>20 A. It was a relatively low percent. I'd say</p> <p>21 something less than a couple of percent. Now, it</p> <p>22 varied from time to time because if someone would go</p>
<p style="text-align: right;">Page 87</p> <p>1 Did you have any responsibility for either</p> <p>2 setting, reviewing, or approving list price?</p> <p>3 A. No.</p> <p>4 Q. Whose responsibility was that?</p> <p>5 A. Well, it would have gone up through that</p> <p>6 hospital business sector and, you know, typically it</p> <p>7 would be the senior person in that sector, depending</p> <p>8 upon the products.</p> <p>9 Q. In your role as senior vice president of</p> <p>10 HPD or president of HPD, did you have an understanding</p> <p>11 as to the relationship between list price and what</p> <p>12 actually was -- Abbott was selling the product for in</p> <p>13 the market, or the contract price?</p> <p>14 A. Repeat the question one more time.</p> <p>15 Q. Sure. Let me see if I can streamline it.</p> <p>16 Did you have an understanding as to the</p> <p>17 relationship between list price, an HPD products list</p> <p>18 price, and the contract price, what Abbott was selling</p> <p>19 it in the marketplace.</p> <p>20 A. I'd say the bulk of what I reviewed in our</p> <p>21 financials would have been actual net revenue for the</p> <p>22 division. So it would primarily have been contract</p>	<p style="text-align: right;">Page 89</p> <p>1 off the market on a certain product, then list price</p> <p>2 sales in that product might rise because someone had</p> <p>3 to buy, you know, from the competitor.</p> <p>4 If the competitor was off the market, so</p> <p>5 someone had to go in and buy your product at list</p> <p>6 price, so it probably had little ebbs and flows in it</p> <p>7 over a period of time, but in general I would say a</p> <p>8 couple of percent.</p> <p>9 Q. Now for that approximate 2 percent market,</p> <p>10 if you had a competitor, like, for example, for</p> <p>11 vancomycin, Eli Lilly.</p> <p>12 A. Mm-hmm.</p> <p>13 Q. And Eli Lilly's list price was 25 or 50</p> <p>14 percent lower than Abbott's list price, would you</p> <p>15 expect that that -- that individuals or -- or entities</p> <p>16 buying at the list price level, meaning they didn't</p> <p>17 have a contract with Abbott, that they would be more</p> <p>18 likely to purchase from the competitor with the lower</p> <p>19 list price?</p> <p>20 A. All things being equal, I would say yes.</p> <p>21 But there could be some differentiation between the</p> <p>22 two products in way of delivery system, the purity of</p>

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<p style="text-align: right;">Page 94</p> <p>1 A. I think as I was describing to you, over 2 time you would see, as contract prices go down, okay, 3 because of competitive factors, and list price was 4 being nominally increased, you would actually -- in 5 the hospital market you would actually see some sort 6 of a widening gap between those two. 7 And -- and that, in this particular 8 business, sometimes happened at a faster pace because 9 in the generic injectable business, as new competitors 10 enter, sometimes prices, contract prices, can go down 11 more quickly. 12 Q. If contract price is going down, why would 13 list price continue to go up? 14 A. Well, I told you two reasons. One is there 15 is a certain amount of sales that do exist at list. 16 So at the end of the day if someone has to buy our 17 product and they're not going to go on contract, you 18 know, we don't necessarily want to give them a better 19 deal. 20 Number 2, some contracts had this mechanism 21 built into them where list price actually helped you 22 get to that aggregate bundled increase that you were</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Essentially it was the ones I described. 2 You know, the big hospital ones are Premier, Novation, 3 Consorta, Catholic Group, Tenet, and Columbia/HCA. 4 Q. Do you know whether they had alt site 5 components? 6 A. If they did, they were relatively small. 7 Q. Do you recall ever dealing with them or 8 discussing with them their alternate site components? 9 A. No. 10 Q. Same question for in your role as senior 11 vice president of HPD. What GPOs did you work with? 12 A. It roughly would have been the same group. 13 I'd say more emphasis on Novation and -- Novation and 14 Premier. 15 Q. Did you work with any or deal with any GPOs 16 on their alternate site needs or market? 17 A. No. 18 Q. In your role either with HP- -- AHD or HPD, 19 did you work with Baylor? 20 A. Can you be more specific? 21 Q. Sure. 22 A. I want to make sure I answer it accurately.</p>
<p style="text-align: right;">Page 95</p> <p>1 allowed to take in those contracts. 2 Q. Okay. At any time in your -- well, let me 3 ask you this. Let's round this out. 4 Did you review the catalog list prices 5 before they were published in your capacity as Abbott 6 -- as senior vice president for HPD? 7 A. No. 8 Q. Did you review any contract pricing? 9 A. Individual product pricing? 10 Q. Or, you know, product lines. 11 A. I would have reviewed, as an example, the 12 aggregate proposal to a large GPO, as an example. Not 13 the individual pricing, but I would look at, you know, 14 if we sold X millions of dollars to the GPO last year, 15 what is the contract that we're offering this year and 16 what's the relative difference between those. Not 17 individual prices, but it would actually be what the 18 overall contract was being offered, the value of that 19 contract. I would have reviewed that. 20 Q. I don't think I asked you this question 21 before. What GPOs did you work with when you were 22 with AHD?</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. Did -- Baylor is in Texas; right? 2 A. I know where it's at. 3 Q. Okay. Well, did you sell to Baylor when 4 you -- earlier in your career, when you were -- 5 A. No. No. 6 Q. Okay. Had a large -- it has a large health 7 system in Texas; is that fair? 8 A. Mm-hmm. 9 Q. Did you work with Baylor or the Baylor 10 account or any component of the Baylor account? 11 A. I mean, I visited Baylor in some capacity. 12 I'm trying to remember where. 13 And the reason why I was being a little 14 more cautious is you probably know Boone Powell was on 15 our board, who was the CEO of Baylor for a period of 16 time. So obviously I interacted with Boone. 17 Q. Okay. 18 A. But did -- did I actually do any kind of 19 contract negotiations? Is that what you're asking? 20 Q. Yeah. 21 A. The answer is no. 22 Q. Okay. What about -- maybe not necessarily</p>

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<p>1 You can go ahead and answer that if you have an 2 answer.</p> <p>3 THE WITNESS: My basic understanding of the 4 Ross issue was one around bundling the disposable and 5 the device together.</p> <p>6</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Do you -- did you have an understanding as 9 to whether or not Ross was providing free devices to 10 entities?</p> <p>11 A. I think that is the bundling issue --</p> <p>12 Q. Okay.</p> <p>13 A. (Continuing) -- in and of itself.</p> <p>14 Q. If Abbott home infusion was providing 15 product basically free of charge, without -- without 16 charging fair market value for the product, for the 17 devices, do you see a parallel between the two -- you 18 know, the two conduct -- the conduct between Ross and 19 home infusion?</p> <p>20 A. No.</p> <p>21 Q. How come?</p> <p>22 A. Because in the Ross situation, at least as</p>	<p>1 president of HPD would you expect that that's 2 something that you would learn about?</p> <p>3 A. I would expect that either I'd learn about 4 it or get some level of legal review to determine the 5 validity of it.</p> <p>6 Q. Do you know whether that ever took place?</p> <p>7 A. I've already testified I didn't know that 8 there were any.</p> <p>9 Q. Why did you make the decision to close the 10 home infusion business unit?</p> <p>11 A. We did an analysis of -- of that particular 12 business to look at whether or not it -- it fit in the 13 portfolio for where we wanted to take HPD, and, No. 2, 14 whether or not it was a reasonable business to be in 15 the portfolio. And this happened relatively early on 16 in my tenure as the president of HPD. So sometime I'd 17 say late '98, early '99 kind of time frame.</p> <p>18 And we made the determination that if you 19 looked at the business and you fully burdened it, 20 it -- it had at best marginal profitability. I think 21 you could probably argue it lost money. But at best 22 probably marginal profitability.</p>
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<p>1 I understand it, we were charging for the disposable 2 and capturing a portion of that disposable cost to 3 offset the cost of the pump. That has nothing to do 4 with consignment.</p> <p>5 Q. Okay. But if no fair market value was 6 charged under these consignment arrangements, how does 7 Abbott's -- how would Abbott's home infusion 8 department identify what they actually charged for the 9 product, or whether or not they were actually charging 10 anything for the product?</p> <p>11 A. I -- unless I looked at the detail of it, I 12 can't answer your question.</p> <p>13 Q. Did anyone raise -- ever raise any concerns 14 about -- with you or anyone, to your knowledge, within 15 Hospital Products Division with the legality of the 16 home infusion business model?</p> <p>17 A. No.</p> <p>18 Q. Did you ever hear of any customers raising 19 legal concerns about the home infusion business model?</p> <p>20 A. No.</p> <p>21 Q. If customers had raised concerns about the 22 legality of the home infusion business model, as</p>	<p>1 It clearly was more of a service-oriented 2 business than a product business, and we were -- we 3 were trying to take the business with us into more 4 differentiated kinds of products. So it didn't fit 5 strategically where we wanted to go. And so I made 6 the decision we should -- we should shut it down.</p> <p>7 Q. Do you know what Don Robertson's position 8 was with regard to whether or not the business should 9 be shut down?</p> <p>10 A. I don't recall specifically Don Robertson's 11 position, but there were -- there were people within 12 the group that had a different point of view.</p> <p>13 Q. Who? Who?</p> <p>14 A. Well, I think Mike Sellers to some extent 15 had a different point of view. They were typically 16 the people who were involved in the business.</p> <p>17 Q. Do you recall what Mike Sellers' objections 18 was to closing?</p> <p>19 A. Well, the areas that he agreed were 20 obviously the profitability side of it.</p> <p>21 I think the concern was some of these 22 customers were large hospital customers who we were</p>

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<p>1 clarify. Actually, let me back up.</p> <p>2 When was the product launch for sterile</p> <p>3 water, sodium chloride, dextrose? I'm assuming it was</p> <p>4 potentially decades ago? Is that fair?</p> <p>5 A. Yeah, I would guess. I don't know, but it</p> <p>6 was a long time ago.</p> <p>7 Q. In terms of what you described as the</p> <p>8 product launch providing the initial bases for</p> <p>9 determining list price, was that applicable to sodium</p> <p>10 chloride, dextrose, and sterile water?</p> <p>11 A. I don't know.</p> <p>12 Q. Would there be any reason to have -- for</p> <p>13 the hospital market to have a list price for those</p> <p>14 fluids that is multiple times higher than what the</p> <p>15 actual contract price is?</p> <p>16 MR. REIDY: Asked and answered at least</p> <p>17 twice this morning.</p> <p>18 THE WITNESS: Yeah, I -- I answered it in</p> <p>19 this capacity issue that we -- that we've talked about</p> <p>20 a couple of times about if somebody is going to use</p> <p>21 your product off contract, the way you have to</p> <p>22 manufacture it, typically you need overtime and other</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>SIGNATURE OF THE WITNESS</p> <p>Subscribed and sworn to and before me</p> <p>this _____ day of _____, 20_____.</p> <p>Notary Public</p>
Page 303	Page 305
<p>1 kinds of things, and therefore you want to recoup a</p> <p>2 much higher investment. And a high list price, if</p> <p>3 someone is only going to buy it for a short period of</p> <p>4 time, is a reasonable business approach.</p> <p>5 MS. ST. PETER-GRIFFITH: We are at -- we've</p> <p>6 got approximately 10 minutes left. Why don't we call</p> <p>7 it a day for the day, and then we can move on to</p> <p>8 another area in the morning, okay? Thank you.</p> <p>9 MR. REIDY: 9:00 a.m., everybody?</p> <p>10 MS. ST. PETER-GRIFFITH: That sounds good.</p> <p>11 THE WITNESS: Do you leave these documents</p> <p>12 here?</p> <p>13 MR. REIDY: They'll take care of them.</p> <p>14 MS. ST. PETER-GRIFFITH: Yes.</p> <p>15 THE VIDEOGRAPHER: We're off the record at</p> <p>16 4:48 p.m. with the conclusion of Part 1 deposition of</p> <p>17 Richard Gonzalez.</p> <p>18 (Whereupon this matter was</p> <p>19 continued to Wednesday, June 4,</p> <p>20 2008, at 9:00 o'clock a.m.)</p> <p>21</p> <p>22</p>	<p>1 STATE OF ILLINOIS)</p> <p>2) SS:</p> <p>3 COUNTY OF DuPAGE)</p> <p>4 I, ROBIN M. CHIMNIAK, a notary public</p> <p>5 within and for the County of DuPage and State of</p> <p>6 Illinois, do hereby certify that heretofore, to wit,</p> <p>7 on the 3rd day of June, 2008, personally appeared</p> <p>8 before me RICHARD A. GONZALEZ, a witness in a certain</p> <p>9 cause now pending and undetermined in the United</p> <p>10 States District Court, For the District of</p> <p>11 Massachusetts, In re: Pharmaceutical Industry Average</p> <p>12 Wholesale Price Litigation.</p> <p>13 I further certify that the witness was by</p> <p>14 me first duly sworn to testify the truth, the whole</p> <p>15 truth and nothing but the truth in the cause</p> <p>16 aforesaid; that the testimony then given by the said</p> <p>17 witness was reported stenographically by me in the</p> <p>18 presence of said witness and was thereafter</p> <p>19 transcribed under my personal direction, and the</p> <p>20 foregoing is a true and complete transcript of the</p> <p>21 testimony so given by the said witness as aforesaid.</p> <p>22 The signature of the witness to the</p>

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Gonzalez, Richard A. HIGHLY CONFIDENTIAL

June 3, 2008

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1 foregoing deposition was not waived.

2 I further certify that the taking of this
3 deposition was pursuant to notice and that there were
4 present at the taking of said deposition the
5 appearances as heretofore noted.

6 I further certify that I am not a relative
7 or employee or attorney or counsel, nor a relative or
8 employee of such attorney or counsel for any of the
9 parties hereto, nor interested directly or indirectly
10 in the outcome of this action.

11 IN TESTIMONY WHEREOF, I have hereunto set
12 my hand and affixed my notarial seal this _____
13 day of _____, 2008.

14

15

16

17

18 _____
19 ROBIN M. CHIMNIAK, CSR

20 License No. 084-001999

21

22

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EXHIBIT 29

Gorospe, James Kevin

March 19, 2008

Sacramento, CA

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X
IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION:
PRICE LITIGATION) 01-CV-12257-PBS
-----X

THIS DOCUMENT RELATES TO:) Judge Patti B. Saris
U.S. ex rel. Ven-A-Care of)
the Florida Keys, Inc. v.) Magistrate Judge
Abbott Laboratories, Inc.,) Marianne B. Bowler
et al.)
Case No. 06-CV-11337-PBS)
-----X

--oOo--

WEDNESDAY, MARCH 19, 2008

--oOo--

VIDEOTAPED DEPOSITION OF

JAMES KEVIN GOROSPE

Reported By: JOANIE MURAKAMI, CSR No. 5199

Registered Merit Reporter

Certified Realtime Reporter

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Gorospe, James Kevin

March 19, 2008

Sacramento, CA

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<p>1 Q. And what was his position at that time?</p> <p>2 A. He was a pharmaceutical consultant, a</p> <p>3 staff pharmaceutical consultant.</p> <p>4 Q. Similar to the position you had before</p> <p>5 you took over the chief position?</p> <p>6 A. Yes.</p> <p>7 Q. And did he report to you or summarize</p> <p>8 to you the conversations he had with other state</p> <p>9 Medicaid pharmacy programs about why they were</p> <p>10 not going to implement the Medicaid AWP's?</p> <p>11 A. Yes.</p> <p>12 Q. And he told you that the reason they</p> <p>13 were not implementing the Medicaid AWP's was</p> <p>14 because of concerns over access to care?</p> <p>15 MR. GOBENA: Objection. Form.</p> <p>16 Foundation.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MR. COLE:</p> <p>19 Q. Do you keep in contact with Mr.</p> <p>20 Hillblom?</p> <p>21 A. Yes.</p> <p>22 Q. How often do you talk to Mr. Hillblom?</p>	<p>1 Q. And is that consistent with your</p> <p>2 understanding of why the department recommended</p> <p>3 not to implement these AWP's; that there was not</p> <p>4 only the access to care component but also that</p> <p>5 if these AWP's were implemented, then Medi-Cal</p> <p>6 beneficiaries might have to start going into a</p> <p>7 hospital to receive services and that would</p> <p>8 increase program costs?</p> <p>9 MR. PAUL: Objection. Form.</p> <p>10 THE WITNESS: Yes.</p> <p>11 MR. GOBENA: Same objection.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. COLE:</p> <p>14 Q. And then the memo goes on. It lists,</p> <p>15 as a second option, it says: B: The department</p> <p>16 could delay implementation of these price changes</p> <p>17 until a mechanism has been established to</p> <p>18 transfer the drug cost savings to increased</p> <p>19 provider professional fee reimbursement.</p> <p>20 And then the last option is C. It</p> <p>21 says: The department could not implement the new</p> <p>22 price reporting mechanism.</p>
Page 199	Page 201
<p>1 A. Quarterly.</p> <p>2 Q. Where does -- what city does he live</p> <p>3 in?</p> <p>4 A. Elk Grove.</p> <p>5 Q. California?</p> <p>6 A. Yes.</p> <p>7 Q. If you go to the last page -- I'm</p> <p>8 sorry.</p> <p>9 Going back to the previous page where</p> <p>10 it says options, the memo looks like it lists</p> <p>11 three options, A, B and C, and the first option,</p> <p>12 A, says: The department could implement these</p> <p>13 price changes, and then it says, as a positive,</p> <p>14 or a pro, to this option: The Medi-Cal program</p> <p>15 would save an undetermined amount of drug costs.</p> <p>16 And then as a con, it says: Providers may choose</p> <p>17 not to provide these services to Medi-Cal</p> <p>18 beneficiaries. Providers may hospitalize</p> <p>19 patients to obtain the medically necessary</p> <p>20 services resulting in increased program costs.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p>	<p>1 And then it ends with the</p> <p>2 recommendation that Medi-Cal not implement the</p> <p>3 new price reporting mechanism due to the serious</p> <p>4 impact on both the providers and beneficiaries.</p> <p>5 And so that was the recommendation from</p> <p>6 DHS, to the Governor's office, that the Medicaid</p> <p>7 AWP's not be implemented, correct?</p> <p>8 MR. ZLOTNICK: Objection. Form.</p> <p>9 THE WITNESS: That's correct.</p> <p>10 BY MR. COLE:</p> <p>11 Q. And do you know -- I think we covered</p> <p>12 this already but the Medicaid AWP's were never</p> <p>13 implemented, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. So would you agree with me that the</p> <p>16 Governor's office accepted the recommendation of</p> <p>17 DHS on this issue?</p> <p>18 MR. ZLOTNICK: Object to the form.</p> <p>19 THE WITNESS: I don't recall if the</p> <p>20 Governor's office ever responded.</p> <p>21 BY MR. COLE:</p> <p>22 Q. Was it common for the Governor's office</p>

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Gorospe, James Kevin

March 19, 2008

Sacramento, CA

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<p>1 for Roxanne?</p> <p>2 MR. GIULIANA: I'm speaking for Day.</p> <p>3 MR. PAUL: Does anybody here want to</p> <p>4 speak for Roxanne?</p> <p>5 They issued a subpoena. You didn't</p> <p>6 notice it. I assume you will at some point.</p> <p>7 Roxanne actually cross-noticed this in their</p> <p>8 federal case.</p> <p>9 MR. GOBENA: For the federal Abbott</p> <p>10 case, though, this deposition is closed, though,</p> <p>11 and, you know, we'll object to any further</p> <p>12 testimony being brought in. I mean we may or may</p> <p>13 not. I'll leave that open but, you know, we're</p> <p>14 not going to treat it necessarily as open ended</p> <p>15 beyond March 31st for additional testimony for</p> <p>16 Mr. Gorospe in that case.</p> <p>17 MR. PAUL: I thought that was</p> <p>18 consistent with your --</p> <p>19 MR. COLE: It is. I will say this,</p> <p>20 though. My only concern is to the extent there</p> <p>21 are any documents that the state or that Dr.</p> <p>22 Gorospe produces in response to the subpoena, or</p>	<p>1 covered by the subpoena after the discovery</p> <p>2 cutoff and I guess we'll have to deal with that</p> <p>3 issue at that time but I just want to make sure</p> <p>4 that's the only scenario where we would foresee</p> <p>5 having to bring him back for the DOJ case against</p> <p>6 Abbott.</p> <p>7 MR. GOBENA: Understood.</p> <p>8 THE VIDEOGRAPHER: This is the end of</p> <p>9 the deposition of Kevin Gorospe. The time is</p> <p>10 approximately 6:42 p.m.</p> <p>11 (The deposition adjourned at 6:42</p> <p>12 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16 JAMES KEVIN GOROSPE</p> <p>17</p> <p>18 Subscribed and sworn to and before me</p> <p>19 this _____ day of _____, 20____.</p> <p>20</p> <p>21 _____</p> <p>22 Notary Public</p>
Page 391	Page 393
<p>1 that may be covered to the subpoena, to the</p> <p>2 extent there are additional documents that we</p> <p>3 receive that we have not -- that we receive after</p> <p>4 today, we would reserve the right to ask Dr.</p> <p>5 Gorospe about those documents but that's the only</p> <p>6 scenario --</p> <p>7 MR. PAUL: I just want add, to the</p> <p>8 extent I just want to represent to you those</p> <p>9 documents are all electronic; is that right,</p> <p>10 John?</p> <p>11 MR. FISHER: Right.</p> <p>12 MR. PAUL: And I don't see you getting</p> <p>13 them before March 31st, which I understand to be</p> <p>14 your cutoff, just given -- I mean I know --</p> <p>15 MR. COLE: Sure.</p> <p>16 MR. PAUL: -- you've been --</p> <p>17 MR. GOBENA: In the federal case, but</p> <p>18 obviously, in your state case --</p> <p>19 MR. PAUL: I'm just talking about the</p> <p>20 federal cutoff.</p> <p>21 MR. COLE: Right. And again, I don't</p> <p>22 know how that would play out if we got documents</p>	<p>1 I, JOANIE Y. MURAKAMI, a Certified Shorthand</p> <p>2 Reporter of the State of California, duly authorized to</p> <p>3 administer oaths, do hereby certify:</p> <p>4 That I am a disinterested person herein; that</p> <p>5 the witness, named in the foregoing deposition was by me</p> <p>6 duly sworn to testify the truth, the whole truth, and</p> <p>7 nothing but the truth; that the deposition was reported</p> <p>8 in shorthand by me, JOANIE Y. MURAKAMI, a Certified</p> <p>9 Shorthand Reporter of the State of California, and</p> <p>10 thereafter transcribed into typewriting by computer.</p> <p>11 That before completion of the deposition,</p> <p>12 review of the transcript [] was [X] was not</p> <p>13 requested. If requested, any changes made by the</p> <p>14 deponent (and provided to the reporter) during the</p> <p>15 period allowed are appended hereto.</p> <p>16</p> <p>17</p> <p>18</p> <p>19 JOANIE Y. MURAKAMI, CSR No. 5199</p> <p>20</p> <p>21 --oOo--</p> <p>22</p>

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EXHIBIT 30

Haas, Rosemary

August 30, 2007

Washington, DC

Page 1

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

- - - - -x

In re: PHARMACEUTICALS INDUSTRY : MDL No. 1456

AVERAGE WHOLESALE PRICE : Civil Action No.

LITIGATION : 01-12257-PBS

_____:

:

THIS DOCUMENT RELATES TO: : Judge Patti B.

: Saris

United States of America, ex :

rel. Ven-a-Care of the Florida : Magistrate Judge

Keys, Inc., : Marianne B.

CIVIL ACTION NO. 06-11337-PBS : Bowler

- - - - -x

Washington, D.C.

Thursday, August 30, 2007

HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

Videotaped Deposition of ROSEMARY HAAS, a
witness herein, called for examination by counsel
for the United States of America in the

Henderson Legal Services
202-220-4158

Haas, Rosemary

August 30, 2007

Washington, DC

<p style="text-align: right;">Page 86</p> <p>1 work that led up to passage of the Part D drug 2 benefit in 2002 and 2003. 3 Q. Did part of that work involve tracking any 4 proposed changes in the way that Medicare was 5 reimbursing -- was going to be reimbursing for drugs 6 after passage of the Medicare Modernization Act? 7 A. No. 8 Q. So as we -- as you testified earlier, 9 you're aware that that was a transition from using 10 AWP to using ASP that was part of the Medicare 11 Modernization Act of 2003. You remember that 12 testimony? 13 A. Yes. 14 Q. Okay. And is it your testimony that you 15 weren't the one in the Washington affairs office who 16 was following that part of the legislation? 17 A. That was not an issue we followed and 18 participated in as part of the Medicare Part D drug 19 benefit. 20 Q. This has been previously marked, 21 Ms. Sensibaugh, as Plaintiff's 1123. 22 MS. TABACCHI: Ms. Haas.</p>	<p style="text-align: right;">Page 88</p> <p>1 and the subject matter, is this the kind of document 2 that you would have personally reviewed after 3 receiving it? 4 A. Not necessarily. 5 Q. And why do you say not necessarily? 6 A. This was an internal activity to discuss 7 issues that were policy issues that were being 8 presented in Congress, and I might have -- I wasn't 9 working on these particular issues, so if I got 10 this, saw the cover, I might have just put it aside. 11 Q. As you go to the re line, it says re 12 Medicare working group meeting. Do you see that? 13 A. Yes. 14 Q. And we've already established that you 15 participated in multiple Medicare working group 16 meetings, correct? 17 A. Yes. 18 Q. And it says in the first paragraph the 19 next Medicare working group meeting will be held on 20 Tuesday January 21st, 1997 from 8:00 a.m. to 9:30 21 a.m. in a conference room. Do you see that there? 22 A. Yes.</p>
<p style="text-align: right;">Page 87</p> <p>1 BY MR. GOBENA: 2 Q. Oh, sorry. Did I call you Ms. Sensibaugh? 3 A. We're both short, so -- 4 Q. You guys do look kind of alike. 5 A. She's from South Carolina. I'm from 6 Pittsburgh, so -- 7 Q. Why don't you take a moment, Ms. Haas, to 8 look at the first three pages of this document that 9 I've handed you. You've had a chance to review the 10 document? 11 A. Yes. 12 Q. If you look at the top, this piece of 13 interoffice correspondence is from Richard Rieger, 14 and it's dated January 15th, 1997, and there are a 15 bunch of addressees listed, among which we find you, 16 Ms. Haas. 17 A. Uh-huh. 18 Q. Taking a look at this document, do you 19 recall receiving it? 20 A. My name is on it. It probably arrived in 21 my in box. 22 Q. Just based on your review of this document</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. It goes -- Mr. Rieger goes on to say, 2 "Based upon input from several of you, I am 3 proposing the following agenda for the meeting," and 4 the first bullet point is discuss the average 5 wholesale price versus actual cost issue. Do you 6 see that there? 7 A. Yes. 8 Q. Okay. Now, this is the second memorandum 9 that we've seen today, Ms. Haas, where there's been 10 a reference to a discussion by the Medicare working 11 group about average wholesale price, correct? 12 A. Correct. 13 Q. So it's fair to say based on these 14 memoranda that there were multiple conversations 15 about the issue of average wholesale price held by 16 the Medicare working group. 17 MS. TABACCHI: Object to the form. 18 A. I would say so. 19 Q. Were you personally involved in more than 20 -- in meetings of the Medicare working group where 21 the issue of average wholesale price was discussed? 22 MS. TABACCHI: Object to the form.</p>

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Haas, Rosemary

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<p style="text-align: right;">Page 106</p> <p>1 of things, so I don't recall being asked anything 2 particularly related to e-mails. 3 Q. Were you given multiple instructions over 4 the years to preserve documents related to AWP? 5 A. I don't recall if there were multiples of 6 that. 7 Q. Do you recall definitely at some point 8 being asked to preserve? 9 A. Yes. 10 Q. But it's your testimony that you don't 11 recall whether you were asked more than once to 12 preserve. 13 A. Yes. 14 Q. And once you started using e-mail more 15 frequently, what kinds of measures did you use to 16 save those e-mails as they related to AWP issues? 17 A. I did not have significant e-mails on AWP 18 and I was never asked to preserve e-mails on AWP. 19 Ask me about drug importation. I have a lot of 20 files I'm saving on drug importation. 21 Q. Understood. I'm going to hand you what's 22 been previously marked as Plaintiff's 1125, and I'm</p>	<p style="text-align: right;">Page 108</p> <p>1 THE VIDEOGRAPHER: We're going off the 2 record. The time on the screen is 11:17:05. 3 (Discussion off the record) 4 THE VIDEOGRAPHER: We're back on the 5 record, 11:18:05. 6 BY MR. GOBENA: 7 Q. It's going to be -- actually, Ms. Haas, 8 can I have this document marked as 1351 and then 9 she'll hand it back to you and continue your review. 10 A. So I need to give this to -- 11 Q. To the court reporter. 12 (Plaintiff's Exhibit 1351 13 was marked for 14 identification.) 15 BY MR. GOBENA: 16 Q. Have you had a chance to review the 17 document, Ms. Haas? 18 A. Yes. 19 Q. On the first page, you'll see it's a 20 distribution list of the Medicare working group, and 21 you're listed there on the first page, correct? 22 A. Yes.</p>
<p style="text-align: right;">Page 107</p> <p>1 just going to ask you a couple quick questions on 2 it. We're not going to dwell on it. 3 MS. TABACCHI: I'm sorry, Gejaa. What 4 number is this? 5 MR. GOBENA: It's 1125. 6 MS. TABACCHI: Of course, it's right 7 there. 8 BY MR. GOBENA: 9 Q. It's a short memorandum, Ms. Haas. I just 10 want to know if you've ever seen this memorandum. 11 A. No, I don't recall seeing this memo. 12 Q. So I understood your testimony, because it 13 will help us go a lot faster, you didn't work at all 14 on the fiscal year '98 Clinton budget proposal that 15 would shift Medicare reimbursement for drugs from 16 AWP to actual costs? 17 A. I did not work on that issue. 18 Q. This has been marked as an exhibit 19 previously. I just don't know the exact number 20 right now. Let me take a moment here to check my 21 records and see if I can figure that out. Why don't 22 we go off the record.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. And on the next page, we have a memorandum 2 from Mr. Rieger dated March 7th, 1997 that says -- 3 that's to the distribution list, which you're on, 4 and it says, "Re Medicare working group meeting 5 minutes, March 6th, 1997," and it goes on to read, 6 "Due to my absence at the most recent working group 7 meeting, Jim Miller drafted the meeting minutes and 8 they're attached for your review. As before, please 9 provide me with any changes that you would like 10 incorporated before we publish the final version of 11 the minutes." Do you see that? 12 A. Yes. 13 Q. Do you recall reviewing drafts of minutes 14 prepared after Medicare working group meetings? 15 A. I may have. 16 Q. Did you ever provide any comments on any 17 drafts of Medicare working group meeting minutes? 18 A. Not that I recall, and I would say that at 19 this point I was no longer really participating in 20 these meetings even though I'm on the distribution. 21 Q. And why do you say that, Ms. Haas? 22 A. Because I was involved in other issues and</p>

28 (Pages 106 to 109)

Haas, Rosemary

August 30, 2007

Washington, DC

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<p>1 warrant such questioning, and I will pass the</p> <p>2 witness to my colleague, Mr. Rand, representing</p> <p>3 Ven-a-Care of the Florida Keys.</p> <p>4 MR. RIKLIN: How much tape do we have</p> <p>5 left?</p> <p>6 THE VIDEOGRAPHER: We have 19 minutes.</p> <p>7 Would you like to change it now?</p> <p>8 MR. RIKLIN: Yeah, why don't we take a</p> <p>9 break and then start with the new tape.</p> <p>10 THE VIDEOGRAPHER: Here marks the end of</p> <p>11 Videotape Number 4. We're going off the record.</p> <p>12 The time is 15:32:35.</p> <p>13 (Recessed at 3:32 p.m.)</p> <p>14 (Reconvened at 3:41 p.m.)</p> <p>15 THE VIDEOGRAPHER: Here marks the</p> <p>16 beginning of Videotape Number 5 in the deposition of</p> <p>17 Rosemary Haas. The time on the screen is 15:41:22.</p> <p>18 You're on the record.</p> <p>19 EXAMINATION BY COUNSEL FOR</p> <p>20 VEN-A-CARE OF THE FLORIDA KEYS, INC.</p> <p>21 BY MR. RIKLIN:</p> <p>22 Q. Good afternoon, Ms. Haas. How are you?</p>	<p>1 see. Here's one from Rieger. What exhibit did you</p> <p>2 say?</p> <p>3 Q. 1170. It's one of the first documents</p> <p>4 that was introduced this morning.</p> <p>5 A. Sorry. I would have put them in order on</p> <p>6 the break.</p> <p>7 Q. Not a problem. It's a December 13, 1996</p> <p>8 memo, interoffice correspondence from --</p> <p>9 A. Okay, we got it.</p> <p>10 Q. Okay, all right, and you're shown as a</p> <p>11 recipient of that memo, correct?</p> <p>12 A. Yes.</p> <p>13 Q. At the time, you were a member of the</p> <p>14 Medicare working group committee or group.</p> <p>15 A. Yes.</p> <p>16 Q. And the subject line says, "Medicare</p> <p>17 working group meeting, 12/16/1996," and it -- and</p> <p>18 Mr. Rieger starts off, "In preparation for next</p> <p>19 week's meeting." Does that indicate to you that</p> <p>20 there was a Medicare working group meeting on</p> <p>21 December 12 -- excuse me, December 16, 1996?</p> <p>22 A. That's what this says, yes.</p>
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<p>1 Ms. Haas, my questioning won't be nearly as lengthy</p> <p>2 as Mr. Gobena's because he's covered a lot of ground</p> <p>3 I would have covered had I gone first, but there are</p> <p>4 some things I'd like to clarify, and there probably</p> <p>5 are -- I can tell you, there will be a few documents</p> <p>6 that I want to talk to you that Mr. Gobena has not</p> <p>7 -- did not introduce to you, present to you.</p> <p>8 Earlier, you told us that you at least at some point</p> <p>9 participated in the Medicare working group meetings</p> <p>10 at least by telephone, correct?</p> <p>11 A. Yes, correct.</p> <p>12 Q. Was one of the purposes of the Medicare</p> <p>13 working group to monitor any changes that Congress</p> <p>14 was considering to Medicare reimbursement?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Take a look at Exhibit 1170, which</p> <p>17 is a December 13, 1996 memo from Richard Rieger to</p> <p>18 the Medicare working group.</p> <p>19 A. I guess I should have kept these in order.</p> <p>20 Q. Yeah. You were shown that document</p> <p>21 earlier.</p> <p>22 A. I just didn't keep them in order. Let's</p>	<p>1 Q. Okay, and I realize you don't recall</p> <p>2 whether -- or did you say you thought you did</p> <p>3 participate by telephone in connection with this</p> <p>4 meeting?</p> <p>5 A. I don't recall.</p> <p>6 Q. Okay.</p> <p>7 A. I know I participated in some.</p> <p>8 Q. During this time period, you did</p> <p>9 participate in at least some --</p> <p>10 A. Yes.</p> <p>11 Q. -- Medicare working group meetings by</p> <p>12 telephone, correct?</p> <p>13 A. Yes, correct.</p> <p>14 Q. Because some of these people were in</p> <p>15 Chicago at the time, and then you and your</p> <p>16 colleagues in government affairs were in Washington.</p> <p>17 A. Correct.</p> <p>18 Q. Okay. Mr. Rieger states that, "For next</p> <p>19 week's meeting, we would like to propose the</p> <p>20 following agenda," and then he has three bullet</p> <p>21 points, correct?</p> <p>22 A. Yes.</p>

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